

Cour d'Appel

Montréal

En appel de deux jugements rendus le 26 juillet 1991, par
l'hono[uré] distri

Nos. 2

LE PROCUREUR GÉNÉRAL DU CANADA
APPELANT-Intimé

5

RJR-MACDONALD INC.

INTIMÉE = Béquérante

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LE PROCUREUR GÉNÉRAL DU CANADA

5

IMPERIAL TOBACCO LTD

INTIMÉE-Baguérante

87

LE PROCUREUR GÉNÉRAL DU QUÉBEC

D O S S I E R C O N J O I N T

Volume XLIX: pages 9452 à 9589
(Dépositions)

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RCB 588 05 00287

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CANADA
PROVINCE DE QUÉBEC
DISTRICT DE MONTRÉAL

COUR SUPÉRIEURE

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BOT, J.C.S.

RJR-MACDONALD INC.
Requérante

IMPERIAL TOBACCO LIMITÉE
Requérante

c.

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CANADA
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Intimé

11 avril 1990 - Vol. 59

C O M P A R U T I O N S :

Pour la requérante
RJR-MACDONALD INC.

Pour la requérante
IMPERIAL TOBACCO LIMITÉE

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Procureurs

OGILVY, RENAULT
Procureurs

Pour l'intimé
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M^e CLAUDE JOYAL,
PAUL EVRAIRE, ESQ.,
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Procureurs

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In the year of Our Lord nineteen hundred and ninety (1990),
on this eleventh (11th) day of the month of April, PERSONALLY
CAME AND APPEARED:

- 5 Me GEORGES R. THIBAUDEAU
on behalf of Petitioner, RJR-Macdonald Inc.
Pour la requérante RJR, Colin Irving et Georges
Thibaudeau.
- Me SIMON V. POTTER
10 on behalf of Petitioner, Imperial Tobacco Limitee,
Et pour Imperial, Simon Potter.
- Me ROGER E. BAKER, Q.C.
on behalf of Respondent
For the Attorney General, Roger Baker, Claude Joyal,
15 Paul Evraire, and Lise Tremblay.
- THE COURT:
The eleventh (11th) of April.
- Me BAKER:
How was the bridge this morning, My Lord?
- 20 Me POTTER:
I think we ought to punch another few holes in the ozone
layer, My Lord.

In the year of Our Lord nineteen hundred and ninety (1990),
on this eleventh (11th) day of the month of April, PERSONALLY
CAME AND APPEARED:

5 MICHAEL JOSEPH CHANDLER, being fifty-one (51) years of age,
residing at [DELETED]

WHO, having been duly sworn on the Holy Bible, doth depose
10 and say as follows:

CROSS-EXAMINATION BY Me SIMON V. POTTER

on behalf of Petitioner, Imperial Tobacco Limitée

Q- Doctor, I'm still on your page fourteen (14), and I'm
15 still a little bit troubled by your words: "a highly
distorted image," do you see those words?

A- Yes, I do.

Q- About three-quarters of the way down the large
20 paragraph. And I wonder if you could tell us did you
have anything particular in mind when you wrote those
words or is there an example you could give us?

A- Yes, the example I have in mind is that I think that a
broad and even-handed description of the world of
smoking would include images other than associating
cigarette smoking with attractive lifestyles. So to the

extent that the presentation or the associations that are made between cigarettes and attractive lifestyles are selective or biased, then I would argue that it does constitute a distorted image.

5 Q- And is that -- is that what you say does young people a disservice, the one-sided approach, the biased approach?

A- Well, I wouldn't restrict the -- my claims about the disservice to the fact that the imagery is, in my judgment, one-sided, but certainly this is a part of 10 what I had in mind, yes.

Q- Well, what's the rest of it? I want to come to terms with what you meant by a highly distorted image; and you've explained to us that you consider it highly distorted because you've seen ads which present 15 cigarettes as part of an attractive lifestyle.

A- Yes.
Q- Is there something else?
A- And -- well, have seen -- and not seen ads that present the other face of cigarette smoking.

20 Q- Right. And is that what you meant by highly distorted?

A- Yes, that's what I meant.

Q- Okay. And if I come back to my original question, did you have any particular examples in mind? Did you have any particular advertising in mind when you wrote that 25 or was it simply the general proposition you've just

given?

A- I had no specific cigarette advertisement in mind, no.

Q- Okay. Now, will you agree with me, Doctor, that
advertisements for many products tend to show those
5 products in a context of an attractive lifestyle?

A- Again, I'm not an expert, but yes, I think that's probably the case.

Q- Yes. And did you think in your mind, when you used the words "a highly distorted image," that it was highly
10 distorted to show cigarettes, for example, linked with outdoors activities? Did you have that in mind?

A- Well, I have to be clear that it's the lack of balance in the imagery that's presented rather than their being anything in principle wrong with outdoor living. My
15 claim is only that to the extent that the imagery that's presented is one-sided, that it contributes to a view on the part of young persons that these attractive lifestyles and smoking go hand-in-hand.

Q- Now, do you really think, Doctor, that adolescents,
20 because we're talking about adolescents in this paragraph, people who are over the age of twelve (12), really get the idea from this highly distorted image that you're talking about that there is no down side to cigarettes, that there is no other story to tell, that
25 there is only the attractive lifestyle to consider?

A- No, it's not my contention that adolescents are ignorant of the dangers of cigarette smoking. I've already, in testifying yesterday, referenced at least one (1) author who claimed that eighty-nine percent (89%) of young -- or ninety-eight percent (98%) of young persons recognized that smoking is hazardous to one's health.

5

Q- Well, what I'm trying to get at, Doctor, is even though the image might, in your judgment, be distorted because it's one-sided, don't you agree with me that that doesn't necessarily mean that the adolescent receives and digests only that message?

10

A- Well, if you speak of all the messages available to children, some provided by the government and its health branches and some across all of the images, yes, it's from these multiple sources that I would assume that young persons collect their beliefs and ideas about smoking; but their task of arriving at a balanced and fair appraisal is, I think, complicated by the fact that they are exposed on a regular basis to a one-sided presentation of the full truth of the aspects that accompany being a cigarette smoker.

15

Q- Well, Doctor, I -- I went looking for some ads and I'm going to show you a few and ask you whether that fits -- they fit into your definition of a highly distorted image on page fourteen (14) -- and I've done this

20

25

because I didn't know what you meant by that...

A- M'mm.

Q- ... and frankly, I'm not so sure even now and I'm going to show you a few ads and see -- see if they fit your view of highly distorted image. Do you mind, Mr. Baker, if I stand over here, that way I can not be standing in the easel?

Me BAKER:

Well, we could A) remove the easel and you could simply...

Me POTTER:

Well, we'll be using the easel.

Me BAKER:

...hand the witness an ad one (1) at the time. We'll be using an easel?

Me POTTER:

Yes.

A- If I may, in response to your suggestion, reinforce the point that I made a moment ago that I think the distortion that I'm describing is the fact that, on balance, the imagery that children receive from viewing cigarette advertisements presents one (1) side of the story, so I'm -- it's not my contention, at least I'm not sure that one could, even if one were an advertising expert, stare at individual ads and decide that this, in

and of itself, constituted imbalance. Imbalance is a function of the proportion of exposures that children have to the negative and positive aspects of cigarette smoking.

5 Me POTTER:

Q- Yes, although we learned yesterday, Doctor, that you haven't gone looking at any particular ad campaign or you haven't gone looking at advertising in general in order to write your report. This is just a general impression you have taken about cigarette advertising or lifestyle advertising in general, is it not?

A- I spoke, when I referenced the advertising industry, only from my experience as a citizen who wanders the streets and sees advertising, that's correct.

15 Q- But that experience as a citizen has exposed you to advertising other than just of cigarettes, has it not?

A- Of course it has.

Q- Right. So, perhaps you could just look at this ad, an ad for Hennessy: "A Civilized Way to Keep Warm," and this appeared in Time magazine on December ten (10), nineteen eighty-four (1984) and have you -- have you seen a Hennessy ad or any ad for any kind of alcohol which shows alcohol in a unattractive lifestyle, Doctor?

A- Well, I'm reluctant to comment on everything that I've seen, but I take your point that advertisers of Hennessy

or any other product have it as their goal to present an attractive image of their product.

Q- Right, and here what we have is a -- a youngish couple, say mid-twenties, in a very comfortable situation in the 5 country, sat rather too far apart in my view, but never mind. Would you consider this, Doctor, to present what you call a highly distorted image of society? Does that fit within your words highly distorted image?

A- Well...

10 Me BAKER:

Before he answers the question. Dr. Chandler never talked about a highly distorted image of society, I don't think, he was talking about a highly distorted image of something else.

15 THE COURT:

Of the social world.

Me IRVING:

Of the social world?

Me POTTER:

20 I do beg your pardon, Mr. Baker. It is...

Me BAKER:

Withdraw the remark.

Me POTTER:

... a highly distorted image of the social world.

25

Me BAKER:

It's early in the day.

Me POTTER:

- Q- Now, do you -- do you consider that ads like this -- and
5 assume for a minute, Doctor, that as you say the makers
of Hennessy do not go out producing ads showing Hennessy
in unattractive lifestyles, that ads like this one that
I'm showing you present what you would call a highly
distorted image of the social world?
- 10 A- Well, I repeat my remark of a moment ago, that what I --
what constitutes, for me, a distorted -- a distorted
informational package, if you will, is one that can't
really be decided by looking at a particular ad. The
claim is that, at least it's my belief, that smoking has
15 both attractive or positive features for some persons,
including myself, and also it has many negative
associations or has many, for me, many negative
experiences associated with being a smoker.

THE COURT:

- 20 But Doctor...

A- M'hm.

Q- I'll read again the paragraph of your report.

A- Yes, please.

- Q- "While sometimes this experimentation turns out to
25 be rather benign, some of the images provided by

5

the mass media and lifestyle advertising do young persons a serious disservice by conveying a highly distorted image of the social world and installing attitudes of thought and behavioral patterns that are often hard or impossible to break."

10

In your report, you talk about lifestyle advertising producing some lifestyle advertising, producing a distorted image of the social world. The question is asked to you whether or not you consider the ad dealing with Hennessy as presenting a lifestyle advertising and presenting a distorted image of the social world?

15

A- Well, I do understand that this ad presents a segment of the social world, that's clear. The only thing that makes it distorted in my view is that it is not the case, in my judgment, that, in this case, drinking or in the -- in other cases concerned with smoking, that a balanced picture can be arrived at of the implications of a smoking or drinking lifestyle by seeing these advertisements.

20

Me POTTER:

Q- Well, what's the answer then, Doctor, does it or does it not fit into what you would call the kind of lifestyle advertising which conveys a highly distorted image of the social world? Does it?

25

A- Yes, it contributes to a distorted image if it doesn't

present the other half of the story, yes.

Q- Okay. So it's not presenting the other half of the story, the unattractive part of drinking, which, in your view, makes this kind of advertising a serious
5 disservice to young people.

A- Well, I think it's our task as adults to help children develop a balanced perspective on the world.

Q- Doctor, is it, in your view, the absence of advertising showing the unattractive part of drinking that makes
10 this kind of advertising a seriously distorted image of the social world and therefore a serious disservice to young people?

A- Yes, I believe it contributes to a distorted image.

Q- Okay. Could we produce, then, this Exhibit as ITL-43.
15 Now, Doctor, while we're on Exhibit ITL-43, I take it from what you said yesterday that you believe parents are well equipped to equip their children and their adolescent off-spring to deal with advertisements like this? Is that correct?

20 A- Well, I think the point that I tried to make yesterday when you asked me then about alcohol and the possible ban of alcohol was to recognize that as soon as -- and I think this is the essence of my remarks of yesterday, that when one entertains the banning of something like
25 cigarettes in a free and democratic society, one is

poised on a slippery slope, one needs to be extremely careful because it's not only alcohol that can do children damage, but glue can do children damage, many products can do children a disservice or damage.

5 So I tried to be clear in my remarks yesterday that for my own -- in my own view, one needs to proceed with great caution here and I've tried to make the point very clearly that, for me, cigarettes and, as a consequence cigarette advertising, constitutes a qualitatively different case than not only alcohol, but a great variety of other products which, if misused, can do children serious disservice.

10 So I tried to, in response to your earlier question, indicate that because the government has identified cigarette smoking as harmful to one's health, in, I believe, any quantity, that I feel personally comfortable then with a position in which steps might be taken to ban the advertisement of that product.

15 Now, I think as soon as one starts to go beyond this, then you might now show me advertisements of a great variety of products, like glue or alcohol, and here my point of yesterday was that these products have a mixture of attributes, I'm sure, in every case, but the government has not taken a position that used in any quantities these products are hazardous to one's health.

5

And so it's my view, or the view that I expressed yesterday, that one needs to proceed with great caution here and it's not my view that we should -- or it is my view that we should allow parents to make decisions about the -- teaching their children to use alcohol wisely. Certainly I didn't mean to imply by that that any kind of advertising of alcohol products in any kind of uncontrolled way would, in some way, seem right or appropriate to me.

10

So I think that the industry, I speak really beyond my experience here now, but I think that the industry, even the alcohol industry, has set restrictions on itself, and I think if they did not do so, perhaps other people might wish to set restrictions.

15

But, again, I don't mean to present myself as a person knowledgeable about the advertising industry, but I do mean to be clear that, in my judgment, there is a qualitative difference between cigarette smoking and its advertisement. And a great variety of other products which, if misused, could and probably do, injure the health not only of young persons but persons of other ages.

20

Q- Okay, can we come back to my question now, Doctor. You would be happy to leave children and adolescents to see ads like this one, the one we've just looked at,

25

Hennessy, "The Civilized Way to Keep Warm," and let them sort out for themselves what is the undistorted image of the social world and leave them to learn from their parents about the rules, et cetera; is that correct?

5 A- It's correct that I wouldn't want to see ads of this sort banned, that's correct.

Q- Right, okay. Hennessy actually had a -- a campaign called the civilized way, Doctor, and here's another ad which appeared in Cosmopolitan. Do you know the

10 magazine Cosmopolitan?

A- I've heard of it, I don't personally read it.

Q- Do you know who reads -- who does read Cosmopolitan?

A- Well, I take it that it's a glamour magazine, if that's an appropriate description.

15 Q- And this ad is called Hennessy, "The Civilized Way to Test the Waters," a rather attractive youngish couple again with a very realistic scene of a young lady holding a glass of cognac and dipping her toe into the swimming pool. We do this every day.

20 Me BAKER:

Do we?

THE COURT:

Don't you?

Me BAKER:

25 That's what you were doing last night.

Me POTTER:

You are getting old, Mr. Baker.

Q- Now, Doctor, would you tell me, does this fit into your idea of the kind of lifestyle advertising which presents
5 a highly distorted image of the social world?

A- Well, I think the joke that you just made to the Court suggests that you see this also as a -- as not the way in which most of us drink our cognac. So, I take it that, yes, this is probably not the standard way in
10 which people drink cognac and so it's an attractive lifestyle. It's intended to make this look attractive, it certainly does to me.

Q- Doctor, does it fit into your wording, the kind of advertising which presents a highly distorted image of
15 the social world?

A- I think this would contribute to a child's view that drinking cognac was associated with an elegant -- or a lifestyle or a risqué lifestyle. I think it would contribute to that view.

20 Q- Doctor, does it fit into your definition of the kind of lifestyle advertising which conveys a highly distorted image of the social world?

A- Again, I repeat from before that the distortion is a function of the fact that this is a -- only a corner of
25 reality is being presented here.

Q- And...

A- So, to the extent that only a corner of reality is being presented, yes, I think that presentation is not even-handed and balanced and, in that sense, it is
5 distorted.

Q- So -- so if we take for granted that Hennessy is not also advertising the evil side of Hennessy, you would agree that this kind -- this ad is the kind which fits into your definition of the kind of advertising which
10 presents a highly distorted image of the social world?

A- Yes, I think that was your point also a moment ago.

THE COURT:

And also something is terrible in this ad. They put ice in cognac.

15 Me POTTER:

Oh, no! Oh, My Lord!

Me BAKER:

Yes. That's what Mr. Potter clearly meant by the terrible side of Hennessy.

20 A- Well, it's clearly distorted, My Lord.

Q- He wasn't talking about cognac, he was talking about Hennessy.

Me POTTER:

It turns out the advertisement does display the evil
25 side of cognac.

Me BAKER:

No, poor judgement in the advertising copy. You don't put ice in cognac, Mr. Potter.

Me POTTER:

5 Could we produce this ad, then, as the next exhibit.

BY THE CLERK:

ITL-44.

Me BAKER:

These ads are getting good.

10 Me POTTER:

Q- Now, Doctor, let's leave alcohol for a second. We're going to go to perfume. Here's an ad for Calvin Klein's Obsession perfume, and this is an ad which appeared in the Vanity Fair. Do you know who reads Vanity Fair?

15 A- No, I have no idea.

Q- Do you read Vanity Fair, Doctor?

A- No, if I read it, I would have an idea.

Q- That's true, you're right. In March of nineteen eighty-five (1985), it's an advertisement for Obsession perfume. It's an advertisement, which at first glance shows a single couple, but as you look at it, Doctor, do you agree with me that there's three (3) people in there?

A- I'll have to put my glasses on.

25 Q- Yes, I recommend it.

A- Well, it looks in much the same way that Rorscharch tests sometimes draw out the hidden thoughts of people. I actually don't see the third person but perhaps you could help me.

5 Q- Well, yes, I can. If you look just to the left of the perfume bottle itself, you can see the knee of the third man.

Me BAKER:

Where?

10 Me POTTER:

Behind the O and the B of obsession?

A- I thought that was the edge of the couch, I'm sorry.

Q- Oh, I see, and if you look just above that, you can see the head of the third person, at the woman's right shoulder, can you see that?

A- Perhaps you're right about that but...

Q- Yes.

A- I would not want to swear to it in Court.

Me BAKER:

20 You'd better not because you're in one.

Me POTTER:

Q- And here are these three (3) people or...

Me BAKER:

Yes, I have the same problem.

25

Me POTTER:

Q- For those who don't have my imagination, two (2), nevertheless, some people, you'd agree they're involved in some kind of sexual activity, would you, Doctor?

5 A- Well, they're certainly sitting very closely together, yes.

Q- Yes, and naked. Now, Doctor, does this ad, assuming that Calvin Klein is not out there advertising the trouble that perfume can get you into, would -- does 10 this ad fit into the kind of advertising which presents a highly distorted image of the social world?

A- Well, if this is as you suggest a ménage à trois, then I think that that's statistically anomalous, yes. I wouldn't want to cast moral judgments on it.

15 Q- Well, are you saying it does not present a distorted image of the social world or it does?

A- Well, I think it's a statistically anomalous image.

Q- Doctor, does it fit within your definition of the words you've used or not?

20 A- Well, the words that I've used try to make the point, as I've said before, that the distortion is that the image that persons receive is a one-sided image, and this is one side of an image, I take it, about perfume. I grant you this.

25 Q- Yes, so does it fit within your words or not?

A- Yes, I think it does.

Q- Yes, okay. Could we please present that ad, then, as the next exhibit?

BY THE CLERK:

5 ITL-45.

Me POTTER:

Q- Now, Seagram's also had a campaign, called "America's Number 1 Gin," and I'm showing you an ad now, Doctor, which appeared in Sports Illustrated on June twenty-four 10 (24), nineteen eighty-five (1985). An ad with a greenish tint entitled Seagram's Gin. They say it's the number one (1) gin in America. There's a picture of a gleaming bottle of Seagram's Extra Dry Gin next to, what looks as though it may be a gin and tonic or -- and another picture in the bottom right of a man on his way 15 to being undressed, helping a woman to the same condition. Is this ad, Doctor, the kind of ad, assuming that Seagram's is not also advertising the evil side of gin, if there is such a thing, is this the kind of ad which fits into your definition of a highly distorted 20 image of the social world?

Me BAKER:

Hold on for just a moment.

Me POTTER:

25 Q- Does that ad, Doctor, fit within your definition of a

highly distorted image of the social world?

A- Well, what I see in the ad, as a non-expert, is the juxtaposition of Seagram's gin and someone doing something to what I take to be a young woman, and if the
5 -- if -- I guess, the connection that's presented here is anomalous again, and certainly, if one developed an association in one's mind that this kind of activity goes with Seagram's gin, that would be a distorted image again.

10 THE COURT:

And when you read the text, Seagram's Gin, they say it's number one (1) in America. They say you can taste the difference. They say it's exceptional with tonic and they also say it's improving your vocabulary... in body
15 language. What did you think of that? Everything they say, it says, is true.

A- Well, whether it does improve your vocabulary and body language, I wouldn't want to venture a guess.

ME POTTER:

20 Q- Doctor, you agree that the text that has just been read to you makes a very thinly veiled link, does it not, between the gin and the body language which is displayed in the ad?

A- Sure, I take it to be that that's the whole purpose of
25 this ad.

Q- Right. And do you agree then that it does -- this ad does fit within the definition of the words you used of the kind of advertising which presents a highly distorted image of the social world?

5 A- It certainly presents a one-sided view of gin drinking entirely.

Q- Does it fit in there or not?

A- It does present a highly one-sided view, which is what my definition of a distorted view is.

10 Q- Okay. All right.

Me BAKER:

Are we going to produce this?

Me POTTER:

Yes, please. Could we produce that one, Exhibit ITL-46.

15 We don't need this one.

Q- And just so that we can see that it was an extended campaign, Doctor -- Doctor, could I ask your help in passing those two (2) over to Mr. Baker.

20 And what we're looking at now is another Seagram's gin advertisement, this time appearing in the July eight (8), nineteen eighty-five (1985) edition of Sports Illustrated. The same picture of the Seagram's extra dry gin with a slightly different picture in the bottom right. This time it's the woman helping the man into the state of undress, and the text next to that picture

that I've just described is:

"They also say you should drink it with
someone you know very very well or want to."

Now, Doctor, let's not waste time on this one, does this
5 one fit into your view of the kind of advertising which
presents a highly distorted image of the social world?

A- I see this ad as being different only in trivial ways
from the other ones, so my comments regarding the other
ad apply.

10 Q- So the answer is yes?

A- Yes.

Q- Could we please present that then as Exhibit ITL-47.

THE COURT:

It's not only distorted, it's so gross.

15 Me POTTER:

Q- Here's an ad, Doctor, I'd like you to tell what it's an
ad for, if you can. I'd like your help again, Doctor,
if you will, just passing that over for Mr. Baker.

Me BAKER:

20 Do we get to keep some of these after the trial?

Me POTTER:

They're public exhibits, I...

Me IRVING:

They're mine, Mr. Baker.

25

THE COURT:

It's an ad for what? Oh, I believe ...

Me POTTER:

Q- Do you know what it's an ad for, Doctor?

5 A- No, I can't say that I do.

Q- You can't figure it out, eh? This is an ad showing a young woman in...

THE COURT:

In a negligee.

10 Me POTTER:

...lingerie shaving a young man and they're -- they obviously like each other and the text written over the bottom left is:

"It's time to trust me."

15 Q- Do you have any idea what's being advertised here, Doctor?

A- No, I wouldn't venture a guess.

Q- No. Do you imagine it might be the watches, since they're both wearing two (2) of them?

20 A- I can see that as a logical possibility, but again, I wouldn't venture a guess.

Q- All right. Now...

THE COURT:

I thought it was a razor.

25

Me POTTER:

It made me want to shave myself, My Lord.

THE COURT:

No, no, there are some razors...

5 Me BAKER:

I thought it was something much more appealing than a razor actually.

THE COURT:

Or lingerie, maybe.

10 Me POTTER:

Q- Now, Doctor, let's go right to the question: is this the kind of lifestyle advertising which presents a distorted image of the social world?

15 A- Well, I've just said I can't even understand that this is an ad at all. I take it it probably is and you have -- perhaps there's some other text or -- but as far as I know, it's simply a picture that says it's time to trust me.

Q- Well, what's the answer?

20 Me BAKER:

You haven't established that it's an advertisement, Mr. Potter.

Me POTTER:

25 Well, it's true. I do not have the people who actually made the ad and I don't have the people here who found

the ad in the magazine.

Q- Let's put it to the Doctor as a hypothesis. Imagine you found this in Glamour Magazine, in the September, nineteen eighty-five (1985) issue, Doctor, and imagine
5 that it was -- someone paid to have it appear in that magazine. Do you consider that that's the kind of advertising which fits within your definition of a highly distorted image of the social world?

A- Well, I'm a little harder pressed here because I don't know what this is an advertisement for. It simply is a picture. But if there's a product associated with this,
10 then I would say that it again tries to link this scene with the product, and since it's perhaps an attractive scene then it tries to establish a linkage in people's minds between that product and this attractive scene;
15 and that's my understanding. Again, I'm not an expert on this, but that's what's meant by lifestyle advertising.

Q- Well, what's the answer to the question?

20 A- What was the question?

Q- Does it fit within your definition -- the same question we've asked twenty (20) times now.

A- Right.

Q- Does it fit within...
25

Me BAKER:

And you've gotten twenty (20) answers, Mr. Potter.

Me POTTER:

Q- Does it fit within your definition...

5 A- Yes.

Q- ...of a highly distorted image of the social world?

A- If this picture is associated with some product, then it -- I suppose it presents -- I don't know what that product is. There may be some product for which this 10 isn't an imbalanced perspective, I don't know, but if it's some product like alcohol or cigarettes, then I would take it to be a lifestyle ad to present a one-sided view of the association between such a product and this ad, yes.

15 Q- Are you saying that this is distorted -- presents a distorted image only if it's in association with alcohol or cigarettes?

A- No, I'm saying that in order to know whether -- I suppose there are products for which there is no down 20 side and if, for such a product, if one presents that they're associated with health, if you were advertising vitamins, for example, then I would take it that if you associated some health product with healthy living, that wouldn't be a distortion.

25 Q- Okay. So here we have an example of an ad, Doctor, at

least now we're finding out what may not be a distorted image in your view. It's not distorted, whatever you show, as long as the product does not have a down side; is that right?

5 A- Well, if the product has a down side and it's not shown, yes, then I think that the total take home message that people come away with is a distorted take home message.

Q- Could we produce that then as the next exhibit, ITL-48.

THE COURT:

10 You call it the mystery ad?

Me POTTER:

The mystery ad, that's right. The mystery ad: "It's time to trust me."

Me BAKER:

15 We're not paid to trust you, Mr. Potter.

Me POTTER:

Q- We're now going to look at another ad, Doctor, because I think we're coming to grips, slowly, with what's distorted and what's not.

20 Could I ask for your help again, Doctor, in passing those over to Mr. Baker.

Here's an ad which appeared, as well, in Glamour Magazine...

Me BAKER:

25 Are there any children in the room?

Me POTTER:

...September, nineteen eighty-five (1985). I imagine children see Glamour Magazine, Mr. Baker, from time to time.

5 Me BAKER:

I don't know what Glamour Magazine is, Mr. Potter.

Me POTTER:

And this ad is entitled: "Born in the U.S.A." It's an ad for Zena jeans and it's an ad that shows the -- it 10 looks like the inside of a farmhouse with inside a girl getting either dressed or undressed, wearing a pair of jeans.

Now, would you agree with me, Doctor, that this ad or someone looking at it associates this particular 15 brand of jeans with a very sexy appearance?

A- It certainly seems so to me, yes.

Q- Yes. Does this ad present to you an image which fits within your definition of a highly distorted image of the social world?

20 A- Well, I haven't given much thought to what the down side of jeans might be.

Q- Well, isn't it distorted in your view, Doctor, that jeans always give you a sexy image?

25 A- Well, if that's the take home message here, that jeans give you a sexy image, yes, I would think that that's

less than the full truth of the matter.

Q- Right. And to that extent, does that present a distorted image of the social world, Doctor?

A- It presents an unbalanced image of the social world.

5 Q- Doctor, you used the word "distorted," would this ad fit in your use of the word "distorted."

A- Yes.

Q- Yes.

10 A- I just remind you that my definition of distorted is unbalanced.

Q- Well, that's fine. We're just coming to grips with what that is. Let's produce this, then, as Exhibit ITL-49.

15 Okay. We're going to go a bit more quickly now, Doctor, here's -- we're coming back to booze. And I'm showing you now, Doctor, an ad for Olympia beer, which appeared in a magazine called Outdoor Life in March of nineteen seventy-eight (1978). And it's an ad showing a rather rugged male, obviously an outdoorsy type. In fact, his suspenders read: "logger world," and he's pouring himself, with great gusto, an Olympia beer with, behind him, a beautiful view of what appears to be the Pacific northwest of the United States.

20 Do you agree that this associates the drinking of beer with an outdoorsy healthy lifestyle, Doctor?

25 A- Yes, I would agree with that.

Q- And is this ad one which fits within your definition of the kind of lifestyle advertising which presents a highly distorted image of the social world?

A- Well, it certainly presents an image of beer and an outdoor scene and in that sense it presents only one side of the life of beer drinking and, in that sense, it's a limited -- I need to say that, of course, any single image would, of necessity, present only a slice of or a particular view upon a situation. So I take it there are an infinity of ads, each of which shows things from one perspective or one point of view. And if one -- so any one that you might produce, I would have to answer in a similar fashion that this doesn't present young persons, or anyone else for that matter, with a balanced view of the product being advertised.

Q- So the answer's yes?

A- Yes.

Q- And let's go straight to my last example.

THE COURT:

20 Are you giving...

Me POTTER:

Oh, please produce that -- thank you, My Lord, as
ITL-50.

Q- And you've said in your report, Doctor, that it's --
25 children are very susceptible but they're vulnerable to

advertising. Adolescents also have cognitive difficulties that they haven't coped with yet, so they have vulnerabilities which adults don't have, and that the worse thing one can do for them, besides advertising directly at them, is to advertise for adults, because adolescents like to copy adults. Is that -- I think that's a fair statement.

A- That's a reasonably fair statement...

Q- Yes.

10 A- ...of what I said, yes.

Q- Now, do you have any views about advertising which is aimed at adults who want to copy adolescents?

A- I have no real knowledge of such ads, perhaps you know of some.

15 Q- Well, I've actually found one.

A- There's only one of these, so I...

Q- Here we go, Doctor. I'm showing you now an ad, Doctor, which appeared in Time Magazine in April of nineteen eighty-five (1985). And it's an ad for Mustang entitled "The 20 Hottest Places to go During Spring Break." It has cartoon personalities, not known personalities, but it's surely of the comic book or cartoon variety all over the ad. And the text of the ad, which is quite extensive, is a text showing many places to go for spring break -- obviously, a students' spring break --

and, unfortunately, the very top of the ad is cut off on this photocopy, but the fourth column over, I'm just giving an example, there's a line cut off which should be ..

5 THE COURT:

Why don't you show him...

Me POTTER:

...Steam Boat Springs, Colorado.

Me BAKER:

10 Why don't you just show him the ad?

Me POTTER:

Q- And it's the fourth column which begins on the photocopy that we have:

"Deep powder, Steam Boat is known for its

15 natural hot springs, the spring water is said to have therapeutic value, especially on Wednesdays when bathing suits are optional."

Doctor, does this present a highly distorted image of the social world linking Mustang to the idea of a college spring break vacation?

20 A- Well, I'm having trouble with exactly what to say it is presenting. I take it that it's suggesting that students, particularly college students, go on spring breaks and it's listing places that they might go on such a spring break. And because there's a picture of a

Mustang, I take it that in some fashion the producer of
this ad must have imagined that when you thought of all
of these nice places you would think of Mustang cars,
and I take it that would be the rough point of whether
5 -- I'm sure you can go all these places in a Mustang car
and, if you press me, I'd have to say also that there
are other places than listed on this ad that you could
also go in a Mustang car and -- but I think this
stretches the notion that I've been trying to be clear
10 about through these various examples.

And the general point is that young people need to
know, in particular, I think, about products such as
cigarettes and to arrive at a balanced view of them.
And my contention was that the advertising world
15 presents a one-sided view of that.

Now, I'm having difficulty extending that concept
to Mustangs and these places, but if you wish you can --
this ad suggests where one can drive a Mustang and, yes,
there are other places to which one could drive a
20 Mustang and, in that sense, it's a limited account of
what you can do with a Mustang.

Q- And Mustangs break down, don't they, and they have car
accidents, and you can get drunk on the beach and then
drive your Mustang. There's a down side to driving
25 cars, isn't there, Doctor?

A- Well, it's certainly the case that Mustangs or any other car wears out. I think to try to establish an equivalency, which I think your question implies, between an automobile whose down side is that you might get drunk and have an automobile accident in it and cigarettes which are earmarked by the Canadian government as hazardous to one's health, is to stretch the association in my judgment.

5 Q- Well, are you saying this does not present what you call a distorted image?

A- It certainly presents an image of driving a Mustang to what looked to be about a dozen places, and since you can drive Mustangs to more places if you will, then it's limited.

15 Q- Doctor, I'm trying to find out what you do mean by the distorted image.

A- Well...

Q- And if this doesn't fit in there, tell us it doesn't, then we'll have some better idea.

20 A- Well...

Q- But if it does, I'd like to know.

A- Well, I've tried to be clear that this is a very confusing ad, but it certainly tries to associate this car with an attractive lifestyle I take it, and there is more to cars than going on spring break, and in that

sense, it presents an imbalance, which is my definition of distorted view of the world, yes.

Q- All right. So...

THE COURT:

5 If you take as an hypothesis that what they're trying to show with this ad is that if you're young and you're going to drive a Mustang Convertible, you're going to be hot, because that's the hottest way to go, you go to those hot places, South Padre, Ireland, Taos, New Mexico, Myrtle Beach and you're hot, man! You're on the beach, spring bait -- spring break. That's if the ad, as an hypothesis, wants to show that. Do you think it's a distorted image or it's not?

10

A- Well, in that sense, if their purpose is to suggest that 15 if you have a Mustang you're a hot person or you go to hot places, then that's inconsistent with, in my view, of the world of Mustang owners, yes.

ME POTTER:

Q- So answer yes.

20 A- Yes, you can answer yes to that.

Q- Okay. Let's produce that one then, as Exhibit ITL-51.

Okay, Doctor, while we're there on page fourteen (14) of your report, you can see in the parenthesis in the middle of the page, you refer to cultural icons. Do 25 you know, Doctor, that the Tobacco Products Control Act

will have no effect on any of those cultural icons?

A- Well, it was pointed out yesterday, I think, by My Lord, that Marlboro is an American tobacco company and perhaps Virginia Slims is also. I have no personal knowledge of that. But if those two (2) things are the case, then
5
...
...

Q- My answer was if you knew that? And you didn't know that until yesterday, is that correct?

A- I know that you can buy them in Canada. It's not clear 10 to me who owns or whether -- I just don't understand the complexity of some of these multi-national corporations. If you tell me that Marlboro is a company based in the U.S., I would find that...

THE COURT:

15 Assume that you can buy and advertise Marlboro in the U.S. magazines in Canada or assume Marlboro is an American cigarette. Assume Virginia Slims is an American cigarette and both of them could be advertised in U.S. magazines which are distributed in Canada.

20 Assume that for the purpose of the question.

A- Well, then I would assume that because I argue that I believe children will profit from not being exposed to cigarette advertising, that if the ban only controls products or only controls advertising in Canadian magazines, I guess I would count that as unfortunate

that the positive effect that I believe that a ban would have would be a stronger effect in my judgment if there weren't things leaking across the border that continued to show -- associate cigarettes with, in my view, as you've made perfectly clear, a distorted image of what it means to be a cigarette smoker.

Me POTTER:

Q- Yes. So the answer to the question is that as you wrote the report and, indeed, until yesterday, and perhaps even today, you were not aware that those cultural icons will be unaffected by the Tobacco Products Control Act? That's correct?

A- Yes, I think that's correct.

Q- Now, you agree with me that children and adolescents are affected in one (1) way or another by things which you call cultural icons, movie stars, rock idols, etc.?

A- Yes, I believe that's true.

Q- Yes, and you agree with me that children and adolescents, in fact, it's me agreeing with you, Doctor, because you say it at page three (3) of your report.

"They are uniquely susceptible to a great variety of influences."

Are they not?

A- Yes, I would agree with that.

Q- Yes. So, it's not just advertising and it's not just

cultural icons, it's a great variety of influences?

A- Yes, I...

Q- Yes.

A- ...certainly believe that's true.

5 Q- Right. And if -- if we had to make a list of it, it would be -- it would be a very long list, would it not? It would be parents, it would be relatives, it would be friends, it would be television shows, it would be movies, it would be newspapers, it would be schools and 10 teachers. It would be an interminable list, would it not?

A- Yes, it would be so long we couldn't write it, I would agree with that.

15 Q- Right, okay. Well, let's just talk about the movies for a second. You agree that movies have an effect of one (1) kind or another, perhaps on everyone, do they not?

A- I suspect that they do and I suggest that young children and adolescents are more impressionable and less cognitively able and therefore, consequently, they're 20 more likely to have a -- such children are more likely to arrive at a misconception from seeing these movies, yes.

Q- From seeing movies, right.

A- Sure.

25 Q- Are you aware, Doctor, I've been made aware of it by

5 this -- by the April issue of the Atlantic magazine, but there's a great -- are you aware there's a great effort to place products in movies to get some kind of commercial benefit by having people view a movie and see a product used in that movie? Are you aware that this is done?

A- I've heard this rumour. I assume that because associating products with these kinds of images is a powerful way of inducing people that they -- there's every reason to want to show these products in movies, yes.

10 Q- Right, and to the extent that someone might say let's put cigarettes in a movie and pay for having cigarettes appear in a movie. Would you agree that that would, using your terms, offer a highly distorted image of the social world?

A- Well, it would certainly create the kinds of distorted views that I've described, yes.

15 Q- Yes.

20 A- I think they would contribute to that.

Q- Okay. Now, how would you draw the difference, Doctor, between cigarettes appearing -- for instance, James Bond smokes, other people smoke. Lois Lane smokes.

Me BAKER:

25 She's still around?

Me POTTER:

She's still around.

Me BAKER:

Do you know that of your own knowledge?

5 Me POTTER:

Q- How do you draw the difference between people in movies smoking cigarettes because the cigarette company has paid for that to happen and the writer of the movie, the director, deciding that artistic reality demands that cigarettes appear in the movie? Does the latter also present a highly distorted image of the social world?

10

A- Well, there are a couple of questions.

Q- Well, let's say, take as a hypothesis someone is smoking cigarettes, enjoying it in the movie, no one has paid for it to happen. It's just that the character in the movie is a smoker and enjoys smoking. Does that present a highly distorted image of the social world?

15

THE COURT:

Have you seen Gorillas in the Mist?

20

A- Actually, I haven't seen that one yet.

Q- No, Sigorney Weaver, she smokes in the movie. She's enjoying it.

A- Well...

Me POTTER:

25

Q- Does it present a highly distorted image, Doctor?

A- Well, it presents one (1) view of the social world, yes, and in that sense because it's only one (1) view of the social world, it's not a well rounded view or a balanced view and in that sense, a limited or distorted view.

5 Q- So answer, yes.

A- Yes.

Q- Yes, and would it be the kind of highly distorted image, to use your words, Doctor, which do young persons a serious disservice?

10 A- Well, if your -- if your premise is that there are cigarettes, people are paid to smoke cigarettes in movies, and will that contribute even one (1) more candle in an already well lit room, but still contribute to the view that children develop that smoking is normal and socially sanctioned and is attached to attractive lifestyles, yes, I believe it would contribute to that.

15

Q- Yes, and let's say no one has paid for them to be there but they're there. Does that do young people a disservice?

20

A- Well, it's my understanding that the movies of the twenties ('20s) and thirties ('30s), the old Humphrey Bogart movies had everyone is smoking in these movies for perhaps -- I don't know why -- and that there have been increasingly less movie personalities or actors smoking in recent years. Out of some concern on the

25

5

part of the movie industry or concern that there could perhaps be actions taken against them, and I take it that over the last several years, one sees many fewer people smoking in movies and that that has come about out of some set of concerns on the part of the movie industry. If this process is reversing itself, as your questions seem to imply, then I would take this as unfortunate -- and I think that I certainly wouldn't be alone in taking it as unfortunate.

10 Q- Doctor, to the extent that anyone still does smoke in the movies, answer my question, does that do young people a disservice, to use your words on page fourteen (14) of your report?

A- Yes, certainly if movie stars smoke in movies, then I think it adds to children's beliefs that important cultural icons, if you will, or heroes...

Q- Yes.

A- ...that that helps to legitimate the activity of smoking.

20 Q- Right, and you would say that whether the cigarette company has paid for the cigarette to be there or not, wouldn't you?

A- Yes, I would say that.

25 Q- Yes. Doctor, you've also talked about forbidden fruit in your report and about cigarettes having this aura of

being a forbidden fruit and of presenting a certain risk and risk is attractive to adolescents. Does that fairly summarize your -- your view about forbidden fruit?

A- Certainly speaks to it and I wouldn't argue with what
5 you've said.

Q- Okay. In your view, Doctor, does the presence of advertising increase or diminish that appearance of a risk or the appearance of being forbidden fruit?

A- Well, just to try to be clear, the way I used that term before, I tried to make the point that young persons are eagerly trying to find some kind of way of behaving that will mark them as more mature than they are, and in their search for some way to behave in the world that will make them seem perhaps more grown up than they are,
10 the best things to do, if one wants to pull off this impression, is to try to eat those things that only adults are supposed to do or get to do and so -- it's in that sense that I use this sort of catch phrase or -- of
15 forbidden fruits.

Now, to try to address your question more specifically, if -- if ads show only adults smoking or being associated with cigarette products, then I take it that that contributes to their understanding that this
20 is an adult activity, and to the extent that exclusively adult activities are attractive to them and trying to
25

develop a lifestyle that they see as more mature, then yes, I think it contributes to their being in this general category of what I've referred to as forbidden fruits.

5 Q- And as they're going to look like less of a forbidden fruit if there is no advertising, that's my question?

A- Well, it will -- whether there's advertising or not, it will be the case, I hope, that cigarettes are not sold to minors. So this isn't the only line of evidence. That is, advertising isn't the only line of evidence that leads children to understand that smoking is an adult activity but it certainly contributes to this general picture, I think, yes.

10 Q- So, Doctor, is the answer -- are you telling me that yes, cigarettes will appear to be less of a forbidden fruit if we ban the advertising of them?

A- The fewer times we associate cigarettes with adult activities, although this is again one (1) candle in a very well lit room, I think that, in small and modest ways, it will be the case that children associate cigarette products with maturity, particularly attractive lifestyles, that they will do this less in the absence of ads than in the presence of ads.

15 Q- So is the answer yes -- yes, though infinitesimally, is that the answer?

A- Infinitesimally is your word, but small yes, the answer is yes.

Q- So would the better thing to do to correct this forbidden fruit syndrome be to advertise cigarettes for 5 adolescents? Would that -- would that remove the forbidden fruit appearance?

A- It seems a somewhat backward approach to the problem to me.

Q- Well, I'm just asking you would that remove the 10 forbidden fruit appearance?

A- I suspect if some add campaign went on the road trying to persuade young people that adolescents and children smoke, yes, it would have the effect of making cigarettes seem less an adultlike activity. I would, of course, in my judgment, have lots of other negative implications.

Q- Yes. So, yes, it would remove the forbidden fruit appearance?

A- It would diminish the forbidden fruit.

Q- Okay. All right, I'm going -- we're going to look at 20 some of the articles that you mentioned yesterday, and we'll start with Exhibit AG-234 and, Doctor, that is the Brucks article entitled "Children's Use of Cognitive Defenses".

Me BAKER:

Hold on for just a moment, Mr. Potter.

Me POTTER:

Q- Now, first of all, Doctor, do you agree with me that
5 this had to do with television advertising?

A- Yes, I think I stated that caution very clearly before I
discussed the subject.

Q- You agree with me, as well, that it had to do with
advertising of products which children really like?

10 A- Yes, I also -- I thought in a careful and cautious way
-- drew that fact to the attention to the Court.

Q- Right. And you agree with me that the authors of this
article were only concerned with the children who were
below the age of thirteen (13), that is to say twelve
15 (12) and under?

A- Yes, I think that's the case.

Q- Because they took for granted, did they not, Doctor,
that by the time you are thirteen (13), you have all the
defense mechanisms you need?

20 A- No, I don't think that they took that for granted. They
-- they draw upon some theory by a person whose name is
Roedder, I believe. It's discussed somewhere in this
article.

THE COURT:

25 Roedder.

A- My Lord, where did you find that so I'll get on the right...

Q- Page four seven three (473), bottom of paragraph...

A- Okay.

5 Q- ...right-hand side. Right side.

A- Right, thank you. So, they're guided, as I understand this article, the authors are guided in their focus upon a particular age group that they've chosen, caused drawing upon Roedder's work. They assume these children 10 are in a category in which they can respond to -- they can bring forward certain kinds of defenses if those defenses are cued for them. That is, if there's someone at their shoulder to remind them to bring these defenses to bear.

15 Q- Right, but they -- they say that the only people who need that, perhaps -- and they only say may, are the children eight (8) to twelve (12), isn't that correct?

A- Well, they do suggest that by the time children are thirteen (13) years of age or older, that they're likely 20 to be in a kind of third category in which it can be hoped that they will spontaneously bring these defenses to bear without being cued.

Q- Yes.

A- Although as is, I think, broadly the case, there is no 25 magic threshold. That is, when a child simply becomes

twelve (12) there's little guarantee that an ability which they will come to, which is characterized by this sort of third level, is something that they will step into instantly with both feet. So, I would take it that
5 there is a transitional period here as there is a transitional period in most developmental issues.

Q- Right. Precocious children, such as my own, might be able to do this at the age of eleven (11)?

A- I'm sure they could well have, if they're as precocious
10 as you describe, have done it by ten (10).

Q- Ten (10), I see.

A- But I wouldn't want to suggest that that's the norm.

Q- Okay, in any event, at page four eighty-one (481), the conclusion they reach after all of this in their last
15 paragraph, they say:

"This study suggests that cues along with prior instruction might be needed to help eight (8) to twelve (12) year old children effectively use their cognitive defenses against commercials."

20 Do you agree with me, Doctor, that they -- they took for granted that by the time you're thirteen (13) you don't need to be cued in order to use your cognitive defenses against commercials?

25 A- No, I don't think that it's -- that's reasonable to take

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that for granted. I think they've made a reasonable choice if they're going to study a particular age group, and theory tells them that kids in the eight (8) to twelve (12) year old period particularly need to be cued, that that's a coherent undertaking, to undertake a piece of research to see the extent to which that is true and I think that the -- the body of their paper and the thrust of their conclusions is that their data supports this contention and that surprisingly, even though children had been given an elaborate movie to tell -- to teach them how to ward off certain of the tricks of the trade, if I can use that term, of the advertising industry, to teach them how to do this, and this puts them way ahead of the average rank and file child who has not had the benefit of this kind of -- of training film, that even with that training film, unless someone was there to cue them, that those -- that training was for naught and it didn't help the child in any way mount counter-arguments against the advertising that they were shown in an experimental setting.

So the fact that they chose to focus their attention on this eight (8) to twelve (12) year old group is a perfectly coherent thing to do. I think it would, certainly I believe the authors would not leap to the conclusion in the way that, I think, you have leapt

to the conclusion, that it's simply true on its face,
without any kind of empirical enquiry, that children
over twelve (12) can do this spontaneously. Roedder
proposes this as a theory. They have bothered to do
5 this research with one (1) particular age group. They
haven't, as yet, perhaps there are -- they continue this
research, but to date they -- they make no claims, no
empirical claims about the older age group because
they've not studied the older age group.

10 Q- Right, they didn't -- they didn't see why they should.

A- No, I don't...

Me BAKER:

That's not established from the article, Mr. Potter.

Me POTTER:

15 Well, let's look at page four seventy...

Me BAKER:

That's your own editorial comment.

Me POTTER:

Yes, it is.

20 Q- Let's look at page four seventy-four (474) then, Doctor.
Just -- just above the title hypotheses, two (2)
sentences above that.

"Thus we might expect that children must reach
the strategic processing stage, thirteen (13)
25 years old, before they can generate

spontaneous critical cognitive responses."

Aren't they saying there, Doctor, that they expect that by the time you're thirteen (13), you don't need to be cued anymore, you've got your cognitive defenses and 5 they will be spontaneous?

A- Well, I think, as you've read it, you'll notice -- what it's doing is establishing a lower bound or a -- their argument, and I think they say it very clearly, that you can't expect children to do this spontaneously "before 10 they can -- before thirteen (13) years of age, or they are thirteen (13) years old", but I think that it's not a proper inference to simply assume that because they say that this is the lower -- the likely lower threshold for this ability, that once one crosses this magic 15 threshold, that one is instantly or even in short order going to be able to spontaneously mount defenses.

Q- I'm not suggesting that to you.

A- I thought that's what you had suggested.

Q- No, I'm suggesting to you that they are saying that once 20 someone reaches strategic processing stage, and he's got -- he can -- he's got his cognitive defenses spontaneous, he doesn't need to be cued anymore, isn't that right?

A- Well, but we don't know when that stage is. That's the 25 point. They just say "can't," or in their judgment,

can't occur before twelve (12) or thirteen (13).

Q- Right.

A- They don't say when it occurs or how many thirteen (13) year olds or fourteen (14) year olds or fifteen (15) 5 year olds are able to spontaneously produce defenses against advertisements. And they've done no research on that and I don't think they're entitled to speak on it, nor do I think you're entitled to speak on it.

Q- No, but the general convention in your business is that 10 you reach strategic processing stage at about the age of thirteen (13); is it not, Doctor?

A- Well, as I tried to indicate in my testimony yesterday, that although the word strategic processing stage is certainly not widely used in the literature, there is 15 the general understanding that when kids get to be about twelve (12) years of age they enter a kind of transitional period that leads them, eventually, to a more mature form of reasoning. But I tried to make a point also in my testimony about that yesterday, that 20 this is a transitional period. Kids begin doing very poorly at these things and only gradually come to do better and that these also co-vary with things like socioeconomic level, the level of the child's education, their economic opportunities.

25 So even if it were the case that certain children

did in somehow, some fashion, magically step into this new ability, I think it would be unwarranted to assume that all children did.

THE COURT:

5 Feel free if you want to ask for a break.

Me POTTER:

Thank you, My Lord.

SHORT RECESS

10

Me POTTER:

Q- Now, Doctor, in this same article, Exhibit AG-234, I'm in this last paragraph on page four eighty-one (481) -- and if we read there, they say that:

15

"This study suggests that cues, along with prior instruction, might be needed to help 8 to 12 year old children effectively use their cognitive defenses against commercials."

They go on to say:

20

"If future research confirms this finding, several alternatives exist for implementing this strategy."

And I'd like to ask for your opinion, Doctor, on these possible strategies.

25

A- If you'll give me a moment, please, to read what these

strategies are.

Q- Well, let's go over them one by one.

Me BAKER:

Well, hold it. He's asked for a moment to read it, so
5 let him read it, Mr. Potter.

Me POTTER:

All right.

A- Yes, I've read the balance of that paragraph.

Q- So if we look at the first alternative which they
10 suggest:

"Institutions such as schools and television
itself have an opportunity to educate children
in this regard."

Do you agree with the authors that schools and
15 television can help children in this regard?

A- Certainly I believe that schools can inform children
about techniques used in advertising. I believe also
that television could do this. I have no knowledge
about whether they'd be motivated to do this. I suspect
20 to the extent that these are commercial television
stations dependent upon advertising, it would not really
be in their best interest to educate people in such a
way that they could ward off the selling attempt of
sellers.

25 Q- M'hm. Anyway, it's possible, you just don't know if

they would do it?

A- It's technically possible, it seems counter-intuitive to me that they would, but yes, it is possible, I think.

Q- Okay. If we go to the next one:

5 "Parents can also play an important role."

Do you agree with the authors, Doctor, that parents can help their children erect defenses to advertising?

10 A- Yes, I think that they can. It's also worth pointing out in this regard that the cuing that the authors speak of, they point out that this needs to be done just in advance of the exposure to advertising. So I think that parents could teach children broadly, but if the thrust of this article is correct, then they would also have to be at their shoulders to cue them each time the child witnesses additional advertising.

15 Q- Well, let's jump right to the sentence, then, that begins with the word: "Broadcasters." And we see:

"Broadcasters could insert last minute cues preceding clusters of commercials to remind 20 children to watch the commercials that follow with a careful eye."

That would be the kind of cue you're talking about, would it not, Doctor, one that's just before the commercial?

25 A- Yes, that would be helpful, I think.

Q- That would be helpful. And is it -- is it, in your opinion as a child psychologist, something that would help the child erect the cognitive defense?

A- Well, it's important to appreciate that at least the
5 theory that guides this research focuses or refers to three (3) age groups. The youngest age group, the age group younger than eight (8), they believe that for children of that tender age, that cuing is not helpful. So perhaps for the limited group between eight (8) and
10 twelve (12), if they were cued carefully just before they saw advertisements, I can see, perhaps how a broadcaster could do this on T.V. It's harder to imagine how they would do it on billboards, for example.

Q- Well, that was my next question. You could do it on
15 T.V., you could remind the child that an ad is coming, so that he knows that it's an ad. Don't you agree with me that when a child sees a billboard rather than something that's happening on T.V. there's not much room for confusion; he's going to know that that's an ad?

A- Well, the question addressed by this research is not whether the child knows or doesn't know that an ad is being displayed. Some of the other research that I cited yesterday suggests that children much younger than this are aware of the distinction between ads and
20 non-ads. What's at issue in this article is whether or

not children can adequately defend themselves against the selling attempt of such ads by mounting counter arguments and they do, and I should stress this, go on to make a distinction between mounting counter arguments against the product itself and counter arguments against the advertising enterprise as such.

5

So the suggestion, and I think you'll see this -- perhaps it's the second full sentence on the same page that you're referring to me, it says:

10

"However, even detailed advertising knowledge and a cue to activate it did not produce product counter arguments."

15

So the counter arguments are to disparage the source of these advertisements, that is to disparage the advertising. But their counter arguments seem not to be -- or at least children in this age group, even when trained and cued -- seemed not to be able to mount or display counter arguments against the product as such.

20

So while it's perhaps helpful to children to disparage the source of advertising, that's only a partial step toward defending themselves against the impact of the ad, where what they really need to do is to mount counter arguments against the product and not simply the advertisement enterprise.

25

Q- Okay. Well then, the next article which you quote deals

with exactly that problem. The question of the response to the product itself...

Me BAKER:

Which...

5 Me POTTER:

... and this is the Gorn article, Exhibit AG-235, entitled: "The Effects of Commercials for Adult Products on Children."

A- M'hm.

10 Q- Now, Doctor, this has to do with lipstick in part, does it not?

A- In part, yes.

Q- Yes. And I'm looking at the first page of the article, the last paragraph, and I read in the second sentence 15 that:

"Although all 20 of the respondent Girl Guides..."

The second sentence of the last paragraph.

A- That begins: "In contrast," is that where you're 20 reading?

Me BAKER:

Where are you?

A- So there's a section called "Method."

Me POTTER:

25 Right.

A- And beneath this, a paragraph that begins with
seventy-nine ('79) and then the last paragraph begins
with: "A pilot..."

Q- "A pilot test."

5 A- And this is a para...

Q- The second sentence begins: "All 20..."

A- Okay. "All 20..."

Q- Okay.

10 "All 20 respondent Girl Guides indicated that
they did not currently wear lipstick, but 16
of them already at that time said that they
would probably wear lipstick once they got to
high school."

15 A- Yes, I think that's the point of choosing this
particular product, because it's a product that while
children do not now use they can envision themselves
using it in the future.

20 Q- Right. And it was for that product, was it not, that
the advertising left these girls with something that
they remembered; that is to say: brand awareness. Isn't
that correct?

A- Yes, it's true, but, as I recall, but to a lesser extent
with the other product, which was diet soft drinks.

25 Q- That's right. And when we get to diet soft drinks, if
we go to the next page, the very top of the page, we

read that the potential contribution of diet drinks to being slim would not be particularly relevant to them.

THE COURT:

Where are you?

5 Me POTTER:

At the very top of the page, nine six three (963), My Lord. The first three (3) lines.

A- The point is...

Me BAKER:

10 Hold it. The Judge doesn't seem to have found it on the page. It starts -- the paragraph starts at the top left, "10 year old girls."

Me POTTER:

15 It starts: "10 year old girls, there was little concern about weight."

"Therefore, the potential contribution of diet drinks to being slim would not be particularly relevant to them."

You agree with me, Doctor, that the authors of this article, they concluded that the difference between these two (2) products for these little girls was that cosmetics were relevant to the girls, because they could imagine themselves using them, but diet soft drink was not relevant to them, because they didn't see the need for that product; isn't that correct?

A- That was the point of their choosing these two (2) products, yes.

Q- That's right. And didn't they find that for the cosmetics, for the lipstick, because the girls could imagine themselves at this age eventually using lipstick, the advertisement had an effect, but that the diet soft drink ads didn't?

5 A- Had less of an effect.

Q- Right. And that they related that differential in 10 effect to the relevance of the product to the subject?

A- Well, certainly it was their intention that lipstick was the sort of product that young girls could envision themselves using in the future. Where they acquired this view, how they gleaned it from their social 15 surround, is, I would assume, again a product of all the forces that operate on children. They certainly see, without the benefit of advertisements, women walking around with lipstick. They also see advertisements that associate wearing lipstick with beauty and this was the conclusion to which the young girls came as a 20 consequence, or at least this view that they already had was strengthened as a consequence of exposure to these ads, so they came away with a view that it was more important to wear lipstick in order to be beautiful.

25 Q- Right. What I'm trying to get at, Doctor, is that these

authors concluded, in effect, did they not, that it was not the advertising which made the product relevant to the little girls. The product was relevant and therefore the advertisement had meaning to them; isn't that correct?

5 A- Well, no, I don't think that's correct. Certainly, as you imply, they chose these two (2) products because the girls were expected to see one as more relevant than the other, but they don't really speculate about how these 10 young nine (9) and ten (10) year olds already arrive at their laboratory with a conviction that it's appropriate in the future for them to use lipstick. So they don't suggest that advertising has no relevance to this assumption that children enter this experiment with.

15 Q- No, but you agree with me that the reason they took those products was that they hypothesized that the advertisement would have more of an effect for a child if it was for a product in which the child was already interested, and that that hypothesis proved true.

20 A- Yes, that's true.

Q- That's true, yes. And the point of your testimony and your using this article, Doctor, was to say that here is an article which says that even for products which children don't now use, advertisement may have an effect 25 on what they do later on.

A- Yes, I think that's correct. There are also children who don't now use cigarette products but envision that they will do so in the future.

Q- Yes.

5 A- Or that they might do so in the future.

Q- That they might. But the point of this article is that for the ones who don't envision themselves using the -- a product, the advertisement is not relevant to them?

A- It's less effective.

10 Q- Yes. And, in fact, it's -- it's going too far, is it not, Doctor, to say that this article says that advertising does have an effect on children in relation to products that they don't intend to use? It's going too far to say that, isn't it?

15 A- No, I think it would go too far to say that the effects were equal, but it doesn't go too far to say that the -- the -- even for these products that they don't envision using, that it has some effect.

Q- Well, Doctor, if we go to page -- the second to last 20 page, page nine six six (966), and I'm in the right-hand column. The first full paragraph, down at the bottom, after making the difference between lipstick and diet drinks, we get to the last sentence where they say:
"Even with products like diet drinks, exposure
25 to T.V. commercials ..."

A- Excuse me...

Me BAKER:

We can't find where you are.

Me POTTER:

5 First full paragraph in the right-hand column, the last sentence.

A- First...

Q- The one which you've actually marked, Doctor...

A- Yes, okay...

10 Me POTTER:

Q- ...with the exclamation points.

A- So it doesn't begin with even. Where are we here.

Me BAKER:

Yes.

15 Me POTTER:

Q- It begins with the word "thus."

A- It says thus.

Me BAKER:

Thus.

20 A- Okay.

Me POTTER:

"Thus, even with products like diet drinks,
exposure to T.V. commercials..."

-- because we're talking about T.V. commercials here,

25 aren't we, Doctor?

A- Yes, I've made that very clear.

Q- Right.

"... may ..."

A- M'hm.

5 Q- They don't say it does, they say:

"... may to some extent increase the link

between consuming the product and being an
adult."

It's going too far, is it not, Doctor, to say that this
10 article concludes that advertising of a product to
children who don't envision themselves using the product
will actually lead them to use the product?

A- Well, if I may, I think I need to point out that you --
here, in reading this, and also reading some other
15 sentences from these articles, stress words like "may"
and "to some extent" -- and, if I understand you
properly, your point is to minimize the certainty with
which these researchers expressed their conclusions.
Now, as I think, perhaps is -- is widely known, all
20 research is based on samples of children. You can't --
it's impossible in principle to test all children, so
it's always necessary in every research project to base
your research on a sample and try to generalize those
conclusions to the population at large, and every
careful investigator draws attention to that fact by

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pointing -- using words like "may" and "to some extent" because they would not want to -- to leave the misleading impression that they have tested the entire population and therefore know this with an absolute fact.

10

So, I think it would -- it would misread the intent of the authors to take their careful wording where they're simply cautioning the reader that, of course, they have used the sample and, of course, they're trying to draw inferences to the larger population from which that sample is drawn. But to use this cautious language which is -- which is inherent in all these kinds of research reports, to suggest that this means that the research has -- is not to be taken seriously or that the effects that they demonstrate are not compelling -- because this is why they do statistics, to try to demonstrate that the kinds of effects they have shown are larger than would be expected by chance.

15

Q- Doctor, all I asked you was: but don't you agree that it's going too far to use this article, saying that it concludes that children exposed to advertising of a product they don't use and don't see themselves using will nevertheless be influenced to use it later?

A- No, I don't think it's going too far.

20

Q- You don't?

A- No. I think that they qualify as every responsible scientist would qualify, that because they're dealing with a sample that this may have an effect, but I think they believe in their own findings and I see no reason why they shouldn't.

5 Q- And in -- on the first page of that article, Doctor, on page nine six two (962) in the second paragraph, the word "may" is there twice:

10 "Recent research suggests that children have strong stereotypes of owners of both adult and children's products. T.V. advertising may play a role in this process. So and so and so and so suggests that T.V. can influence which particular products are regarded as significant..."

15 A- Yes.

Q- "And later, even if children are not presently consumers of a product class, exposure to T.V. advertising for these products may, nevertheless, influence how children view the adult world?

20 A- Yes, I take it that here, on the first page as on the last page, they're using appropriate scientific caution.

Q- I see. So you don't think it's going too far to go from that paragraph and the one which -- to which I drew your

attention on page nine six six (966), to say that therefore we conclude that advertising affects children who don't now use the product and who don't see themselves using the product and affects them in a way that maybe they're going to use the product?

- 5 A- No, I don't think it would be going too far. If you -- if you went through every scientific article that I know that's well written and discounted it because they use cautious language like "may," you would simply obliterate the whole of science as I understand it.

- 10 Q- Well, let's go to your Exhibit AG-238, which is the Aitken...

Me BAKER:

Aitken, Leathar and Squair.

15 Me POTTER:

- Q- Aitken, Leathar and Squair. Do you agree with me, Doctor, that these authors found that smoking children and non-smoking children alike were equally aware of brand sponsorship?

- 20 A- Yes, I think that's right.

- Q- Right. Do you agree with me that they -- they concluded that none of what they were saying in this article means that brand sponsorship induces anyone to smoke?

- 25 A- I think they or anyone else would not make the causal claim that sponsorship causes children to smoke.

Q- Right. In fact, at page two o four (204), let's go to page two o four (204), the first full paragraph, the one that begins: "The majority." And I'm in the last sentence:

5 "Thus it does seem reasonable to suggest that young smokers enhance the symbolic appeal of smoking by paying attention to the symbolism involved in the promotion of cigarettes."

You agree with me there, Doctor, don't you, that what
10 they're saying is that the enhanced symbolism is something which happens in the people who are already smoking?

A- Well, that sentence does say, this is true...

Q- Yes.

15 A- ...people who smoke. I think the article as a whole says that the effects of sponsorship are -- can be measured in both smokers and non-smokers.

Q- Well, they found that there was equal awareness of brand sponsorship among smokers and non-smokers, didn't they?

20 A- That's why I draw that fact to your attention when you earmark a particular sentence that only features the smokers in this sample.

Q- Well, that's right. And they go on to say in the next sentence:

25 "This, of course, does not necessarily mean

that cigarette advertising plays a part in inducing children to start smoking."

A- Yes, they're showing the same caution that I've tried to show, that is when you see associations in children's minds built up through exposure to ads, we know that their beliefs and attitudes about these products have been impacted on. The next step that one might hope to take would be to show that these beliefs and attitudes cause them to smoke. As I've tried to be very clear about yesterday, the kinds of studies that would be required to do this are, in effect, impossible in view of the ethical considerations at hand.

Q- In any event, these authors don't conclude that brand sponsorship makes anybody smoke, do they?

A- No, they simply point out that there is a correlation between these events. They can't experimentally control it. It's also, I think, widely known that there are many sciences that can't do experiments: astronomy, for example, is such a science. No one does experiments on planets. But this doesn't prevent astronomy from being a science or from people taking seriously their observation that certain things reliably go together.

Q- Well, all I want to get at, Doctor, is what these people's observations actually were. And their observation was: there's brand sponsorship and young

kids are aware of brand sponsorship and they're aware of it whether they smoke or not?

A- Yes, and more than just simply aware of the existence of these brands, they're aware of the imagery that is associated with these brands.

5 Q- That's right. And the non-smokers knew about it too, didn't they?

A- Yes, they did.

10 Q- Yes. Now, you used this article, Doctor, in your testimony, to say that brand sponsorship is -- I don't know if you used the word insidious, but that's the impression I got. You were saying that children can be misled by brand sponsorship. They see it as something which is not biased, as something which doesn't -- isn't 15 advertising. Isn't that what you used this article to show?

A- Well, that was a very long sentence, and I'm trying to see if I can agree with some or all parts of it, just to -- but ...

20 Me BAKER:

What page are you referring to of the testimony, Mr. Potter? Maybe it will be easier...

Me POTTER:

Well, I don't know, but the Doctor drew our attention to 25 page two hundred and six (206) of the -- of this article

and drew our attention to the number twenty-four (24) in the right-hand column of Table II.

- Q- And you concluded that only twenty-four percent (24%) believed that the sponsorship was really a form of
5 advertising. Isn't that correct, Doctor?

- A- No. To be quite clear, there are three (3) columns or three (3) rows of figures. The first -- well, the very first simply concerns the question of, when asked, whether children think they understand the concept of
10 sponsorship. And it turns out that by ten (10) at least, young persons, the majority of young persons claim that they do understand the meaning of sponsorship, but they didn't simply take these young persons for granted in their claims about themselves.
15 It went on to ask them to explain well, what does it really mean and they judged that to have an adequate understanding of sponsorship, you must hold in mind and integrate two (2) components. One is that companies are what they call the economic component, that's the next row down; that these companies are supplying money for
20 sports events.

- 25 And the second component is that young persons appreciate that they're doing this in part because they derive advertising benefits. So you'll notice then that what's essentially the second major row concerns

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children who can do both of those things, explain sponsorship and mentions both. And that figure is essentially, it's one (1) in zero (0) for the youngest groups, but it climbs steadily, and forty-three percent (43%) of the sixteen (16) to seventeen (17) year olds have this concept in mind, but, as you can see by reading the rest of the chart, that a number of them, the average across all these age groups, is twenty-four (24) -- twenty-four percent (24%) misunderstand in part and assume or at least mention only the economic component of sponsorship.

15

So to the extent that mentioning only this component reflects their failure to appreciate what sponsorship means, then an important proportion, on the average a quarter of these children, and many more at a younger age, have failed to understand what's really afoot in the world of sponsorship.

20

Q- You're saying that most of the children -- you've taken this article as evidence to you that most children don't view promotion as a form of advertisement?

25

A- No, to be very clear, I've said that most children, the highest percentage who understand by this definition, which is forty-three percent (43%) of the sixteen (16) and seventeen (17) year olds, only forty-three percent (43%) understand that sponsorship involves at least the

interaction of these two (2) components.

So I guess that means that fifty-seven percent (57%) of them lack that understanding. There are other ways that you could ask, and in fact they have asked 5 children whether they understand at some level the concept of sponsorship. That is, if you just say: do you understand sponsorship? -- then even the ten (10) year olds will claim that they understand this. So it depends on the level at which you ask this question.

10 Q- Well, let's -- it does. I think it depends on the level at which you ask and the kind of question, doesn't it, Doctor?

A- Certainly.

15 Q- Yes. And if we go to page two o nine (209), the first full paragraph of page two zero nine (209), are dealing with ten (10) and eleven (11) year olds, have some understanding of the purposes of commercial sponsorship. For example, 68% of them disagreed with the proposition that tobacco companies give money to sport because they 20 are generous. Seventy-four percent (74%) agreed, seventy-four percent (74%) of ten (10) to eleven (11) year olds agreed with the proposition that sponsorship of sport is really just another way of advertising.

A- M'hm.

25 Q- Now, had you read that paragraph ...

A- Oh, yes.

Q- ...before you testified yesterday?

A- Yes, I have, and I think it's important to point out and this offers a chance to relate the article that we're dealing with now to the one we dealt with just a moment ago. The -- the questions to which they're referring are cued questions. That is, they ask quite explicitly, and what I think is a bit of a biased question, frankly, they say tobacco companies give money to sports because they are generous. I'm not sure -- here the proposition has been put forward and the child is simply asked to agree or disagree with this proposition. I think that this is equivalent to a cued situation of the sort we were talking about in the preceding paragraph.

15 Similarly, the next question, when they asked...

Me BAKER:

Preceding article or paragraph?

A- Well, in the same paragraph, here, their next sentence, where they say seventy-four percent (74%) agree that sponsorship of sports is really just nothing -- just another way of advertising. Again, this is a leading question, a cued question. At least the concept is structured for these children, and that's -- in those cases, they agree.

25 There's, I think, a social desire ability

component. A variety of studies have shown that children understand that derogating advertising is the -- sort of intelligent thing to do. So children learn very quickly to say bad things about advertising.

5 So, if you present them a proposition that says something bad about advertising, then I'm surprised, frankly, that it isn't higher than seventy-four percent (74%) but I think that that leaves untouched the question of whether left on their own to construct this
10 problem without these cues or without the structuring of these questions, and I think, within the same article, the point is made again when they simply asked them whether they understand sponsorship. They all say they do, but when you press them on this matter it becomes
15 clear that they don't really understand -- or many of them don't really understand.

Me POTTER:

Q- Doctor, are you aware that -- of what's happened to the rates of starting to smoke in Canada over the past ten
20 (10) years?

A- I have no very specific knowledge about this. I understand in a very broad sense that perhaps fortunately there is a reduction in the number of people who started smoking. Whether that's equally true for
25 all age groups, I don't have that data.

Q- And just a final couple of questions, Doctor. You know those ads we were looking at this morning?

A- I can hardly forget them.

Q- Right. The wording that you use on page fourteen (14) 5 of your report is not only that some lifestyle advertising conveys a highly distorted image of the social world but that it can also install attitudes. The kind of advertising we were looking at, Doctor, are the kind of -- do you want to see it?

10 A- No...

Me BAKER:

Page fourteen (14).

A- Yes.

Q- All he needs to see is his report.

15 A- Yes. No, I understand where you're referring to in the report.

Me POTTER:

Q- Right. The kind of advertising we were looking at, Doctor, is that the kind of advertising which installs 20 attitudes?

A- Yes, I think that's its purpose and that it succeeds in that purpose.

Q- And do you agree with me that movies also install attitudes?

25 A- I think life writ broadly installs attitudes so

magazines or movies, yes.

Q- And the life writ broadly, whether it's magazines, movies, books, we get attitudes about all kinds of things, don't we?

5 A- Yes, I believe we do.

Q- About how to drive, about how to drink or how to behave in society, don't we get that from -- just from life writ large?

A- Certainly.

10 Q- Yes, thank you, Doctor. Oh, I'm sorry. Excuse me, My Lord, I'm not finished. Could we look at Exhibit RJR-179? Have you met the expert witness, Mr. Laroche?

A- I did meet him, yes.

15 Q- Yes. And do you -- did you discuss with him your views about children's defense mechanisms to advertising?

A- We met socially on several occasions briefly and I don't remember all the details about this but certainly he was interested in my views and I in his.

20 Q- Well, here are his views, which are at page five hundred and two (502) of Exhibit RJR-179. This is his textbook which he has written for his undergraduate and graduate courses, called "Advertising Management in Canada".

A- If I may just to -- to be clear, because...

Me BAKER:

25 It's okay, I'll give him this and you can step back and

ask him questions.

Me POTTER:

Thank you.

A- Because of being a witness to Dr. Laroche's testimony
5 and knowing that he had written a book on this general topic of, I take it, of advertising, I asked to see a copy and asked him to point out for me where he might have made comments about children because I was interested in his views on this. So, I've read, before 10 you've shown this to me, what I think will prove to be the -- the -- well, I'm not sure if it's this page.

Me BAKER:

Well, why don't you wait until Mr. Potter puts a question to you...

15 A- Sure.

Q- ...in respect of what you've got in front of you?

A- Yes, okay, I just wanted to let -- let you know that at least a few pages of his book I've seen in advance.

Me POTTER:

20 Q- Right. Well, how about this page?

Me BAKER:

Which page is this page?

Me POTTER:

25 Five o two (502), where he's speaking about children and he has a section entitled "Are Children More

Persuasable".

A- Okay, may I take a moment to read it here, please.

Me BAKER:

Sure.

5 Me POTTER:

Q- Doctor, my only question -- my only question is have you read this page before?

A- Well, I'm trying to determine that but I think I have, yes.

10 Q- Okay. Well, I'm in the right-hand column.

A- Okay.

Q- The first full paragraph in the right-hand column.

A- It says -- where it says that children develop defense mechanisms?

15 Q- That's right.

"That children develop defense mechanisms against advertising was also demonstrated in a previous study by Robertson and Rossiter which showed that children can detect the persuasive intent of an advertising message."

Do you agree with that?

A- Well, I -- I need to point out to you that the concept of defense mechanisms as it occurs in this literature has been used in two (2) ways. The simplest way, and in 25 a way that I actually believe is somewhat misleading,

the notion of defense mechanisms is simply linked to the idea that there is persuasive intent. Now, the -- the inference that people like Robertson and his colleague arrive at is if the child is aware that there is selling intent, then there are defenses, but I think that the -- that the whole thrust of the article that we have just been looking at by Brucks suggests that that's not the case and their own much later study -- I'm not sure of the -- it doesn't list the date of the Robertson
5 article. I think it's in the seventies ('70s) if I'm not mistaken. That the thrust of the later and, in my judgment, more carefully executed studies by Bruck are that it's not enough simply to know that there is selling intent, which is -- which is the definition here
10 of what it means to have a defense.
15

Perhaps this is confusing as I say it but the -- the clear point is that in order for a child to defend themselves against the selling intent of an ad, they must first recognize that it's an ad, and having
20 recognized that it's an ad, they really have a small range of options. They can either simply absorb and agree with what was said or they can try to make counter arguments against the ad or they can derogate the source of the ad.

25 Now, at least, I think the more contemporary

literature regards the fact of simply noticing that it's an ad is not, in and of itself, a defense mechanism.

5

It's being able to do something with that knowledge to mount counter arguments or to engage in source derogation. That is, to criticize the advertising enterprise in general. These things have a qualities of defense, that they get the child somewhere so that they can fend off the selling intent.

So, I think if you read this sentence again that
10 you've drawn my attention to, that children develop -- develop defense mechanisms against advertising was also demonstrated, which show that children can detect the persuasive intent of advertising messages.

So, clearly, Robertson and -- as he's being
15 described here -- is defining what it means to have a defense mechanism as simply being aware that this is an ad, and I think, in my own judgment and the judgment of other authors that I've cited, this is simply an inadequate and in fact, I think, potentially misleading account of the concept of defense.
20

Q- Okay, so can we say then that you have an opinion that there is a time lag between being able to identify an ad as an ad and having the defense mechanism to it, and that other experts say there's not much of a time lag?
25

A- Well, I think it's fair to say that these authors,

writing when they did, defined defense mechanisms in the simple way that you've just described and that, in my judgment, and the judgment of others, this is an inadequate way of understanding the concept ...

5 Q- All right. Well, let's deal with your opinion. You say there's a time lag. During that time lag the children are developing their defense mechanisms, is that right?

A- Yes, that's right.

10 Q- Now, tell me, Doctor, in your view, does it help in developing those defense mechanisms for a child to be exposed to advertising? Will he develop them more quickly if he sees advertising or more quickly if he never sees it?

15 A- Well, I think that you can show children advertising without referencing what kind of advertising, and make the point to them as we have done in the study that we've just reviewed, that advertising often has an intent that's not in the child's best interests. So you can clearly make this point so long as advertising of any kind is in the world.

20 Q- Would you agree with me that isolating a child from advertising may delay the formation of the defense mechanisms?

A- I suspect if you could isolate a child from all advertising of every stripe, then they would end up

being ignorant about something that they've never been exposed to. Yes, I would say that's true.

Q- Yes. Thank you.

5 CROSS-EXAMINATION BY Me COLIN IRVING

on behalf of Petitioner, RJR-Macdonald Inc.

Q- Professor Chandler, would you look at page six (6) of your report, please.

In the first full paragraph on that page you open
10 by saying:

"There is evidence, for example, Leventhal,
Glynn & Flemming 1987, indicating that
cigarette advertising influences children as
well as adults."

15 Do you see that?

A- M'hm. Yes, I do.

Q- Would you take Exhibit AG-239 for a moment, please.

Me BAKER:

That's the Leventhal article.

20 THE COURT:

AG what?

Me IRVING:

239. I should perhaps have said before I began, My Lord, there is good news and bad news. The bad news is
25 I have a few questions for Professor Chandler, the good

news is I won't be nearly as long as Mr. Potter. We will very easily finish in the early afternoon.

Q- Have you got that in front of you, Doctor Chandler?

A- Yes, I do.

5 Q- AG-239 is an article by Leventhal, Glynn and Flemming called: "Is The Smoking Decision an Informed Choice?"

First of all, I would like you to confirm to me that that indeed is the article which is referred to on page six (6) of your report, is it?

10 A- Yes, that's correct.

Q- Yes. Now, we've already talked about this article a little bit, I'd like to deal with it at rather greater length for the moment.

15 First of all, who was surveyed for this -- purposes of this article?

A- My understanding and reminding myself by looking at the left or right-hand column of print here, where it says: "the subjects and methods," so it's -- if I remember this correctly, there have been actually two (2) studies, and it began -- the preceding study began earlier with young persons who were in the second (2nd) grade through the twelfth (12th) grade and this study follows, historically, on the heels of that, so that the children who were in grade two (2) in the original study are now, at the time of the study, questioning grade

four (4). So it's essentially children who were in grades fourth (4th) through twelve (12) and I -- it says here: one thousand and seven (1007) subjects. I could go into more detail.

5 Q- When did you first read this article?

A- I'm not exactly sure. Sometime in the spring of last year.

Q- I see. And are you putting it forward to the Court as being an authoritative article, Doctor?

10 A- I'm putting it forward as an article that I found interesting and helpful.

Q- My question was: are you putting it to the Court as being authoritative? Yes or no?

A- Well, I just want to be clear that...

15 Q- My Lord, I think the witness could answer yes or no to such a simple question.

Me BAKER:

My Lord, it's not such a simple question when you ask it that way to an expert witness.

20 THE COURT:

Yes, it is. Answer the question: yes or no.

A- Yes, I think that these people are authoritative, at least in terms of what they say in this article.

Me IRVING:

25 Q- All right. Now, would you tell me, please, what exactly

it was that was the subject of investigation in this article?

A- The subject is children's understanding of or beliefs about smoking in general. As I tried to make clear 5 yesterday, it is not specifically about cigarette advertising, but simply lumps cigarette advertising into a general category of environmental factors.

Q- Point out to me, please, where it mentions cigarette advertising, Doctor?

10 A- Well, it begins talking about -- that this whole enterprise is predicated on a series of suits or a suit involving the tobacco companies. And then it goes on, as I've described, to speak of environmental factors in general.

15 Q- Would you kindly tell me where, anywhere in this article, the subject of cigarette advertising is mentioned?

A- No, the word "advertising" as such, separated out from all other social influences, is not featured in this 20 article.

Q- No. The truth of the matter, and contrary to what you say on page six (6), Doctor, is it not, is that cigarette advertising is never mentioned in this article from the beginning to the end?

25 A- Well, as I have described, it's a discussion of

environmental factors.

Q- And my question is: does it even mention cigarette advertising?

A- It doesn't use the word "ad" that I know.

5 Q- So that when you say, and I quote:

"There is evidence, for example, Leventhal, Glynn and Flemming, indicating that cigarette advertising influences children."

10 Could I say that that statement perhaps distorts what the article says?

A- Well, I think if you're asking, it says there is evidence and of course there is evidence...

Q- For example, Leventhal, Glynn and Flemming.

15 A- Well, but I'm simply speaking to the point that it says there is evidence -- and there is evidence, I've testified about some of that evidence...

Q- I see.

20 A- ...yesterday in Court, the Chapman, Fitzgerald article, for example, the Aitken articles that we've talked about earlier.

Q- I see. So if I read your sentence to say there is evidence which is not found in Leventhal, Glynn and Flemming indicating that cigarette advertising influences children, that would be a correct reading of the sentence, would it?

A- Well, I believe that the Leventhal, Glynn and Flemming article suggests that -- at least what this article does is make it clear that it's not the parents or it's not adults smoking that causes these distorted beliefs,
5 because they misperceive how many adults smoke. It's not the peers who create the distorted beliefs, because they have distorted beliefs about how many peers who smoke. And then they simply throw this back to environmental factors -- and I agree with you completely
10 that they're not more explicit about what these environmental factors are -- but they imply and -- not just imply, but say that this -- that these environmental factors contribute.

So when I've said that -- I've used the word
15 indicating that cigarette advertising influences children as well as adults, I think the article suggests that the environmental package as a whole, that's certainly the author's point, leads children to a distorted view.

20 Q- So which are the environmental factors which they take into account? Doctor, show me in the article where they discuss that, would you, please?

THE COURT:

The comment is found at page thirty-three seventy-six
25 (3376). Don't you think I can read that?

Me IRVING:

My Lord, I am fully aware that the Court has read the whole thing. I don't believe that what the witness has just said to me is accurate however.

5 Q- Well, Dr. Chandler, let's start from the beginning of it, shall we.

The factors which the authors considered to be important for informed choice were set out on the first page, are they not, at page thirty-three seventy-three
10 (3373) in the middle column, health effects of smoking, perceived vulnerability.

Me BAKER:

Excuse me. Where are you reading from?

Me IRVING:

15 I'm on the first page, thirty-three seventy-three (3373).

Me BAKER:

Where on thirty-three seventy-three (3373)?

Me IRVING:

20 Q- Right at the top of the middle column, we have -- we have the factors which were thought to be important for informed choice; is that right?

A- Well, as you'll see in -- they list out five (5) factors here.

25 Q- Yes.

A- Which they're able to manipulate. That is, they're able to find children who have one set of beliefs about the problems of smoking in adults and others who have different views, yes.

5 Q- All right. And do they not define who they consider to be young people who at the greatest risk of becoming adult smokers in the middle column on the first page?

A- Where are you reading, sir?

Q- If you start at the top of the middle column on the 10 first page of the article...

A- M'hm.

Q- ... they say, they list the effects they were looking at, health effects and so on, and then they go on to say:

15 "In this article these beliefs are described and examined to determine if inaccuracies are more common among young people who are known to be at greatest risk for becoming adult smokers. That is, those who currently smoke, 20 intend to smoke, or whose friends or family members smoke."

So you'll agree with me, Doctor, that the group that they consider at greatest risk for smoking are those I've just described to you?

25 A- Yes, you appreciate, I'm sure, that they're choosing as

possible predictor variables things upon which people can differ. That is, that some children have smoking parents, some do not. Some have friends who smoke, some do not.

5 Q- M'hm.

A- They're not able in this study to find children who were exposed to ads and who were not.

Q- No, there's not the slightest indication they were looking, is there?

10 A- Well, there's no point to look, because there are no children who aren't exposed.

THE COURT:

Okay. We'll resume at two fifteen (2H15).

15 LUNCH ADJOURNMENT

In the year of Our Lord nineteen hundred and ninety (1990),
on this eleventh (11th) day of the month of April, PERSONALLY
CAME AND APPEARED:

5 Me IRVING:

Pour la requérante, RJR-Macdonald, Colin Irving et
Georges Thibaudeau.

Me POTTER:

Pour Imperial, Simon Potter.

10 Me BAKER:

Pour le Procureur général, Roger Baker, Claude Joyal et
Lise Tremblay.

In the year of Our Lord nineteen hundred and ninety (1990),
on this eleventh (11th) day of the month of April,
PERSONALLY CAME AND APPEARED:

5 MICHAEL JOSEPH CHANDLER,

WHO, being under the same oath, doth depose and say as
follows:

10 CROSS-EXAMINATION BY Me COLIN K. IRVING,

On behalf of Petitioner, RJR-Macdonald Inc.:

Q- Professor, just before we leave it, and still looking at
Exhibit AG-239...

A- Sorry, mine are not done by numbers.

15 Q- I see. It's the Leventhal article.

A- Yes.

Q- You said, in giving evidence yesterday -- and it's at
page eight nine six one (8961) of yesterday's
transcript, starting just around line five (5) -- you're
20 answering a question from the Court here and you say
this in the first full sentence on the page:

"But at least in the case of the Leventhal
article most of these children who are being
asked this question aren't smokers and of
those children who are not smokers or at least

not yet smokers, still 36% of them believed that smoking wouldn't hazard their own health."

Do you see that?

- 16/0063 5 A- Yes, I do.
- Q- Yes. And, of course, that's not what the article says at all, is it?
- A- You'll have to give me a moment if you will.
- Q- Well, let me direct you to the part of the article I'm 10 thinking of, which is at page three three seven four (3374), where there is a heading "Results", then "Hazards of Smoking" and then "Perceived Invulnerability". Do you see that?
- A- Yes.
- 15 Q- The left-hand column at the bottom of the page. At baseline, it says:
- "A subsample of 622 of the subjects was asked whether, if they did smoke, they 'would be less likely, about as likely or more likely to get sick from smoking than other people'."
- 20 Do you see that?
- A- Yes, I do.
- Q- And that was the question asked, was it not?
- A- M'hm.
- 25 Q- And those who were categorized as invulnerables were

those who said they were less likely to get sick from smoking than other people. Isn't that so?

A- Yes, that's so.

Q- Which is not at all to suggest that they felt that 5 smoking wouldn't hazard their own health but simply that they thought that to some unspecified degree they were less likely than others to get sick from smoking. Isn't that true?

A- Yes, it's people who answer that question saying they 10 are less likely to get sick than others that are called the invulnerables.

Q- Yes. And so we agree, do we, that when you say here that thirty-six percent (36%) of them believe that 15 smoking wouldn't hazard their own health, that is not a statement which is justified by the findings of this article?

A- If I had said "less likely..."

Q- Yes.

A- "... to hazard their own health", I would have probably 20 quoted more directly from the article, yes.

Q- And the article doesn't tell us, does it, how much less likely they thought they were to get sick than other 25 people?

A- No, it's simply a choice between these options, so it's less likely.

Q- Finally, on that same article, would you just look at page thirty-three seventy-five (3375) for a moment? There is a section called "Understanding of Addiction and Withdrawal". Do you see that?

5 A- Yes, I do see it.

Q- Are you familiar with that part of the article?

A- Yes, although I found it a rather confusing section.

Q- I thought you were putting this forward as an authoritative article, Doctor.

10 A- No, I simply was quoting from it as a valuable article, but that doesn't mean that every line in it is clear.

Q- Well, let's see what's difficult about it. Under the heading "Understanding of Addiction and Withdrawal", there are a series of questions which were asked. Do you see those? The subjects were asked how hard it is for heavy smokers and for light smokers to quit smoking. Are you with me?

A- Yes, I am.

Q- Response options were: "Very hard", "Somewhat hard" and "Not hard at all" for each of these two (2) questions. "Very hard" or "Somewhat hard" were considered correct answers.

A- M'hm.

Q- Now, if you go to the end of that section and to the column on the right, it says:

"Of the 62 subjects who had tried to quit smoking, 29, 47% reported that they had experienced difficulty in trying to quit."

Are you able to enlighten us whether that was great
5 difficulty or little difficulty or barely any
difficulty, or do you know?

A- It simply says that they experience difficulty, it
doesn't go on to qualify it further.

Q- Well, you're not able to assist us from your knowledge
10 of this article?

A- No, not unless it's in the article no.

Q- Right. I should take it, should I then, that the
remainder, which I would make fifty-three percent (53%),
recorded that they experienced no difficulty in trying
15 to quit?

A- Yes, I think that's -- you can take that. It would make
them very unusual, I think, but that's what they said.

Q- Are you familiar with the Canadian government program
called: "Break Free?"

20 A- Not under that specific name, no.

Q- Are you aware that the government of Canada has been,
for some years now, conducting campaigns to try to
educate adolescents concerning smoking?

A- Yes, I'm aware of that.

25 Q- Will you take it from me that the program at the moment

is known as the "Break Free" program?

A- Sure. I'm be happy to do that.

Q- Have you, by chance, seen any of the television advertisements for "Break Free"?

5 A- Not to my knowledge, no.

Q- I'd like to show you then, Exhibit RJR-71 for a moment.

Me BAKER:

Hold on. Mr. Irving, have you got an extra copy for the witness?

10 Me IRVING:

I think we do. Mr. Mitchell will give him...

Q- That exhibit, Professor, is an article by a James Mintz from the Health Promotion Directorate, Health and Welfare Canada. Do you know Mr. Mintz?

15 A- No, I do not.

Q- I'm not going to ask you to read the whole thing.

There's a couple of parts of it I want to put to you and see if you agree with it.

Me BAKER:

20 You might -- excuse me, My Lord, if I might, perhaps it might be fair to at least allow the witness to have a quick look at the article so he can at least context the questions that are going to be asked, if he's going to go into it.

25

THE COURT:

Well, we'll see what the question is first.

Me IRVING:

Q- Well, if you'd look first at page six four five one
5 (6451) at the bottom, the numbering on the bottom right.

A- Yes, I'm on six four five one (6451).

Q- Well, I'm going to ask you to accept from me, to shorten
things, Professor, that the program is aimed at
adolescents. And in the page I have referred you to you
10 will see at the top a heading called: "Background in the
Break Free Campaign."

A- M'hm.

Q- And a description of social marketing. I'd ask you to
also take from me that one of the main features of this
15 program is a series of television advertisements
directed to adolescents. And in the third paragraph
there is the following which I'd like to read to you:

"However, it is important to recognize that
social marketing programs, particularly mass
20 media campaigns, cannot reasonably be expected
to reduce smoking in any group."

I would ask you if you agree with that from your
perspective as a child psychologist?

A- If I may, I'd like to read the balance of the paragraph.

25 Q- Surely. Anything you like.

A- Well, I don't claim any special expertise in the various programs that have been mounted to educate young persons or -- if -- my understanding of this sentence is that the rest of the paragraph goes on to talk about this is
5 why the social marketing element of break through is only one aspect of the national program to reduce tobacco use.

Q- I see.

A- So I take it that they believe that it's an aspect of
10 this broader program.

Q- My question to you is whether you agreed with that first sentence?

"It is important to recognize that social marketing programs, particularly in mass media campaigns, cannot reasonably be expected to
15 reduce smoking in any group."

Do you agree with that or not?

A- I have no information that would allow me to agree with that.

20 Q- Would you look at page six four five eight (6458). There is a heading on the right-hand column: "Behaviour." If you would just read that paragraph.

A- Okay.

Q- Now, that paragraph begins as follows:

25 "Smoking behaviour is assessed by the survey

and the information is used to judge the extent of the problem rather than the effectiveness of the campaign. It is acknowledged that social marketing programs alone are insufficient by themselves to alter behaviour."

5 I ask you the same question: do you agree with that?

A- Well, again, I'm not an expert on social marketing programs and so I don't really know whether they're in 10 and of themselves sufficient or not sufficient. I take it that the authors mean here, as they did on the previous paragraph that you asked me to read, that this is a component in a larger program.

Q- Right. Now, again, I'm going to ask you to accept 15 something from me without -- so as to avoid going through the whole article. The program, as I say, consists to a large extent of television commercials directed to adolescents and they use a rock video format with currently popular rock personalities.

20 Would you agree that if you were trying to reach adolescents that television would be the most effective medium among the mass media at the moment?

A- Yes, I would agree with that.

Q- And if you were able to choose the cultural icon, to use 25 your word, you would use to get your message across,

would you agree with the "Break Free" people that a current rock idol would be the appropriate choice?

A- That would be a good choice.

Q- Yes. Is it seriously your evidence, Professor, that 5 adolescents in this day and age will model themselves on a middle-aged cowboy?

A- Well, my understanding of the imagery of middle-aged cowboys is that they are symbols of independence and that -- so it is my belief that adolescents are very 10 much interested in independence and if something serves as a symbol of that, then I take it that they're interested.

Q- I see. Okay. Well, I'm finished with that article.

15 And you are aware now if you were not aware before, Professor, that the Marlboro cowboy is subject to a specific exemption from the operation of the ban legislation in Canada?

A- Yes, I've been made aware of that.

Q- Are you familiar with the literature generally on the 20 subject of why adolescents begin smoking?

A- I've read a considerable amount of that literature, yes.

Q- I want to show you Exhibit RJR-102, Dr. Chandler, which 25 is a study by the World Health Organization. I have extra copies here. Would you pass one extra copy to Mr. Baker.

This is entitled: "Health Behaviour in School Children." My Lord, the copy I got of this was missing the first two (2) odd numbered pages. Does the Court's copy have them all?

5 THE COURT:

So what is the number again?

Me IRVING:

It's RJR-102.

THE COURT:

10 And what's it called?

Me IRVING:

It's called Health Behaviour in School Children, a W.H.O. cross-national survey.

THE COURT:

15 Could it be in my office?

Me IRVING:

I have an extra copy here, My Lord, let me hand it up to you.

THE COURT:

20 No, I have it here.

Me THIBAUDEAU:

C'est les pages dix-huit (18) à vingt (20) qui semblaient manquer peut-être dans la pièce originale.

Me IRVING:

25 On a juste les pages paires.

THE COURT:

Oui, il manque la page dix-huit (18) et il manque la page vingt (20).

Me THIBAUDEAU:

5 Est-ce qu'il est complet, Votre Seigneurie?

THE COURT:

Non, il manque la page...

Me THIBAUDEAU:

Alors c'est mieux d'en produire une autre comme ça.

10 Me IRVING:

Well, I'm going to hand that up and perhaps we could have that replace the original one. I don't know how that happened, My Lord. It was a production document originally and whether we lost the first two (2) pages or not, I don't know, but what you now have is complete.

15 THE COURT:

Do you have the two (2) pages?

Me BAKER:

We do now.

20 THE COURT:

Okay.

Me BAKER:

I shall forever after be grateful to Mr. Irving for filling in the two (2) empty pages.

25

Me IRVING:

Q- Now, Professor, that is a study carried out under the auspices of the World Health Organization in four (4) different countries. And if you look at page twenty-two (22), you will see that the study population is defined as children aged eleven (11), thirteen (13) and fifteen (15).

5 Well, let me ask you first whether ...

Me BAKER:

10 You've ever read it.

Me IRVING:

Q- ...you're familiar with this document? Have you ever read the World Health...

A- No, I have not.

15 Q- ...study. You've never read it?

A- No, I have not.

Q- Well, there's parts of it I'd like you to look at and see whether you agree with some of the findings. Would you look at pages twenty-six (26) and twenty-seven (27) 20 for a moment?

I'd like to draw your attention first to something on page twenty-six (26) in the right-hand column, it's a very short little column there. It says:

25 "It may be worth noting that Finnish boys, who smoked more than boys from any other country,

5

scored on average one point (1) more on the smoking and health beliefs scale. It is known from other studies that the present trend among Finnish youth, after a period of decrease in the prevalence of smoking..."

It's over the page now.

"...after a period of decrease in the prevalence of smoking, is now less encouraging."

10

Do you see that?

A- M'hm.

Q- You've not seen this study, but have you not seen others, Doctor, which indicate much the same thing?

Me BAKER:

15

What's the question?

Me IRVING:

Q- I think the question is clear. Have you seen results similar to that in other studies?

20

A- Well, if I take the final sentence of this paragraph, which says a strong belief in the harmful effects of smoking does not automatically guarantee that a decrease in smoking will take place, I think that's consistent with my testimony earlier in which I pointed out that some ninety-eight percent (98%) of young people believe that smoking is harmful, but nevertheless, more than a

25

third described themselves as invulnerable or at least less likely to suffer consequences.

But, yes, I'm prepared to believe that a strong -- that a strong belief is harmful, does not automatically guarantee a decrease in -- that smoking will take place.

Q- Are you aware, Doctor, that cigarette advertising, in fact all forms of tobacco advertising, are banned in Finland and have been for many years?

A- I knew this was true in certain Scandinavian countries.
I think, yes.

Q- All right. Now, there is a section beginning on page twenty-seven (27) called: "Smoking Habits Predicted." Perhaps you'd just like to glance at that. And it goes over to page twenty-eight (28).

A- Well, meaning I've -- I think I've met...

Me BAKER:

He hasn't asked you a question yet.

Me IRVING:

I haven't asked a question yet.

A- Well, I'm not sure how far I'm meant to read in this.

Q- Right. I'm going to put it to you, Doctor, that what is found reported on those two (2) pages is that the probability of being a smoker was found by this study to have increased where the student showed poor school achievement or disliked school, had no plans for further

theoretical education and that smoking habits were, and I'm quoting now from page twenty-eight (28), strongly related to the number of smokers in the family. When no one in the close family is a smoker, thirteen percent (13%) of boys and ten percent (10%) of the girls smoked weekly. When there are four (4) smokers in the close family, the prevalence of weekly smokers is forty-six percent (46%) among boys and forty-seven percent (47%) among girls and so on.

10 My question to you is: are you not familiar with a rather vast literature, including Canadian government publications, which show exactly the same thing?

A- Yes, I'm familiar with a variety of publications that make the point that whether one does or doesn't have 15 smoking parents is a predictor of the likelihood of smoking. There's not universal agreement. I've read studies that suggest that it doesn't matter if the father smokes, if the mother does, and a variety of very complicated permutations, but that there is -- but that smoking in the family by other family members is a predictor of the likelihood that a child will smoke. I think the literature that I know is consistent with that proposition.

20 Q- Yes. It's also consistent with the proposition, isn't it, that near friends who are smokers is also a

predictor of whether an individual will smoke?

A- It is, although in interpreting both that fact and others, I would redraw your attention to the Leventhal article that we discussed earlier in which children's 5 perceptions or assumptions about how many peers smoke is greatly at variance with the truth.

Q- M'hm. You haven't compared that finding in the Leventhal article, I take it, with the comparable figures for Canada which are found in documents such as 10 that which I showed you concerning the "Break Free" program, are you?

A- I've not made a systematic cross-national comparison of these figures, no.

Q- If you would turn to page thirty-one (31) of the World Health Study, you'll see there is a summary of findings 15 which I'm not going to go into with you, you'll just see that they're there. And then turn to the next page, thirty-two (32). There is a sentence at the top of page thirty-two (32) in the left-hand column which says this:

20 "The lack of clear differences in smoking habits between countries probably reflects the selection of countries involved in the study in 1983/84. However, since Norway and Finland 25 are countries with a restrictive legislation on advertising of tobacco products and the

5

other 2 countries are not, a difference might have been expected. No such systematic differences are found. Obviously comparisons of trends over time represent a more solid empirical basis for further elaboration of this phenomenon."

10

I just wanted to ask you whether that isn't a kind of research that might be done which wouldn't raise any ethical problems of the kind you were discussing earlier?

15

A- Well, certainly you might describe the actions of various governments to ban cigarette advertising as a natural experiment. That is, young people in one country are exposed more than are children in another country to information or images about smoking. But like all natural experiments, such an experiment would be a very cluttered one.

20

25

There are innumerable differences, I suppose, from one country to the next about a great variety of factors about which I'm poorly informed: economic factors, whether these countries are in states of rapid transition or if they have much exposure to media in general. So I think it would be extremely hazardous, at least for me, given my training and background, to comment upon comparisons that are drawn between

countries that I'm unfamiliar with, whose policies and economic and social practices I'm unfamiliar with.

Q- Well, let's see if we can agree on one thing. If you take a country, let's take Finland, where there is no tobacco advertising, and if you were to find, Doctor, that prevalence of smoking among adolescents which had been declining for a time, was again increasing, rather alarmingly increasing, you would agree with me, would you not that whatever the reason is, it isn't advertising, because advertising is banned?

A- No, I've -- I've never taken a position that advertising is the sole factor responsible for children smoking. So if all they've changed is whether there are or not cigarette advertising but all the other factors are varying freely, then it could well be attributable to any one of a great variety of factors that I can only imagine about.

Q- One of the factors, I suppose, might be the forbidden fruit syndrome, wouldn't it?

20 THE COURT:

What?

Me IRVING:

The forbidden fruit syndrome.

A- Well, whether there is advertising or not, if tobacco products are associated with maturity, and are forbidden

by law, or at least the sale of them is forbidden by law to children, then they qualify as forbidden fruits. The fact that there -- that that notion might be reinforced by advertising or not reinforced by advertising, if there were no advertising, I think leaves the basic concept untouched.

5

Q- Are you familiar, Professor, with the Surgeon General's reports issued in the United States? Have you ever read any of them?

10

A- I've read selected sections of the most recent of his reports.

15

Q- Do you recall ever reading the nineteen seventy-nine (1979) Surgeon General's report which has a whole chapter on the psychosocial influences on smoking and a good deal of comment about why children smoke?

A- I believe I've not read that specifically. There are some references to it in the sections that I've read in the nineteen eighty-nine (1989) Surgeon General's report.

20

THE COURT:

You have the number? 146 what?

Me IRVING:

I beg your pardon, My Lord?

THE COURT:

25

Are you looking at the Surgeon General, seventy-nine

('79)?

Me IRVING:

No.

Me THIBAUDEAU:

5 Pour le moment, RJR-75.

Me IRVING:

I was just looking at...

Q- I want to show you -- I'm going to come back to the Surgeon General's report in a minute. Let me just put it in front of you, RJR-75.

Me BAKER:

Which one is that? Hold on for just a second while I give him a copy up, all right?

Me IRVING:

15 Q- I just wanted to ask you, Doctor, whether you had read that?

A- No, I have not.

Q- I see. Have you read any of the series of publications by Health and Welfare, by the government of Canada, 20 which provide information about the percentage of Canadians who smoke, smoking prevalence among the young and the older, surveys on why people begin to smoke and so on? Have you read any of that?

A- I've read references to some of these quoting certain percentages of people who smoke and don't smoke. I

haven't read these publications, no.

Q- All right.

Me BAKER:

Okay. Give it back now.

5 Me IRVING:

Q- Now, if you'd get the transcript from yesterday, page eighty-nine thirty-five (8935) first.

THE COURT:

Page eighty...

10 Me IRVING:

Eighty-nine thirty-five (8935), My Lord. Starting at the bottom of the page.

THE COURT:

Right.

15 Me IRVING:

Q- My friend, Mr. Baker, put a hypothesis to you, and it begins the second sentence under line twenty (20), and here's what Mr. Baker says to you:

"Assume that the authorities and doctors say,
20 and get the word out, that smoking is
dangerous. Assume that the tobacco companies
say that the health issue is only a
controversy. Assume that the advertisements
of cigarettes present imagery that would
appeal to young people."

And then the question is put to you:

"Could you please tell the Court, having made those three (3) assumptions at a cognitive level ..."

5 -- I presume that relates to the children, not to you --

"... how do young people deal with this kind of problem?"

Me BAKER:

You assume correctly, Mr. Irving.

10 Me IRVING:

Q- Do you see that?

A- M'hm. Yes, I do.

Q- I want to -- keep that in mind, and I want to take you back to transcript page eight nine o nine (8909).

15 Me BAKER:

Do you want him to read the answer first?

Me IRVING:

No.

Me BAKER:

20 I mean to himself, I don't mean out loud.

THE COURT:

Eight nine o nine (8909).

Me IRVING:

Eight nine o nine (8909).

25 Q- But, Doctor, the part of that I'm intending to discuss

with you is the third of the assumptions. Assume that the advertisements of cigarettes present imagery that would appeal to young people, all right.

A- You're on eight nine o nine (8909)?

5 Q- Now, go back to eight nine o nine (8909).

A- M'hm.

Q- You were discussing there an article by Aitken, Leathar and O'Hagan, which is now Exhibit AG...

Me BAKER:

10 I'll tell you in a split second.

Me POTTER:

237.

Me IRVING:

...237.

15 Q- And in dealing with that article you say at the bottom of page eight nine o nine (8909), I'm quoting you now:
"So I take it that there are really 2 points here. One is that they're aware and second that their awareness doesn't just go to whether these ads exist or don't exist, but rather they come away from this exposure with some knowledge about the brand personality or the imagery that's present in these ads."

20 Do you see that?

25 A- Yes, I do.

Q- All right. Would you take Exhibit AG-237, please.

Me BAKER:

That's another O'Hagan article.

Me IRVING:

5 Q- Now -- so you raised with the Court those two (2) points which you said you could take from this particular article, AG-237. The fact is, is it not, Professor, that there's something else you can take from this article, that it was reported the kids didn't like
10 cigarette ads, isn't that so?

A- Well, it's certainly the case that there is data here about young people's reactions to -- that is evaluative reactions to these ads and...

Q- Yes, and it was very negative, wasn't it?

15 A- Well, it was in part quite negative. I think it says -- let me just check myself here, it says on page seven nine five (795)...

Q- Well, let's start a little earlier.

Me BAKER:

20 Well, he's giving his answer at page seven nine five (795), so why don't you just let him proceed in his orderly fashion. He's answering your question.

Me IRVING:

25 All right. We'll read from back to front. Seven nine five (795).

A- Well, it was a specific reference to your question as to whether they find these ads negative.

Q- M'hm.

A- I've said that yes, there is evidence to suggest that
5 they often have very disparaging remarks to make about advertising. That's consistent with my testimony earlier that young persons often engage in what the literature sometimes calls source derogation, that they find it -- that they simply do have critical, quite
10 critical remarks to make about advertising, although you'll recall they're less able to do this about the products advertised. But still the paragraph that I -- the sentence that I would point your attention to on page seven nine five (795), I'm reading from the
15 right-hand column about halfway down in the first paragraph, after the numbers twenty-eight (28), and all of the preceding words really speak to the question of children having these negative attitudes that I've described. But it says:

20 "Nevertheless, our finding that some 12 year olds and most 14 and 16 year olds perceive attractive characteristics in the ..."

-- they're speaking now about the Kim imagery --

25 "... suggest that campaigns aimed at young adults are likely to present qualities that

young teenagers find attractive."

I think a quite similar point was made in another article that I cited yesterday, the article by Chassin, where again while it was obvious that they had many negative comments to make, that they also found much in this mixed imagery to find attractive, such as their belief that smoking made you appear older than you are, that one's -- it made one appear more likely to be interested in the opposite sex, more daring, if I remember.

So the point certainly, I think, that Aitken, Leathar and O'Hagan are making and is reflected again in the work of Chassin, is that certainly young persons have very negative stereotypes -- or their stereotypes are described, I think, as ambivalent, that is a combination of positive and negative attributes. And I think, as I said yesterday, some children will elect to avoid smoking, perhaps in part to avoid what they strongly perceive to be negative characteristics, but that there are other children, these authors propose and I would endorse, that will be attracted to the -- what they perceive to be the benefits in this cost benefit analysis.

Q- How many ads were they looking at in that study?

A- Which study do you refer to, sir?

Q- The O'Hagan study. The one you have in front of you.

A- Well, it lists, I think quite appropriately, not giving children only advertisements to do with cigarettes, but if you read -- they've given them, I think a dozen -- no 5 fifteen (15)...

Q- Fifteen (15).

A- ...different images and of those, as I count it, six (6) of them have to do with cigarettes. Their obvious point is to embed these cigarette advertisements in a larger 10 series of advertisements so that the children will not immediately leap to the conclusion that this is only about cigarette ads.

Q- What was the Kim imagery that appealed?

A- My understanding of this Kim imagery is that, and this 15 is a brand that certainly I don't know, maybe this is, I think, research carried out in Scotland, if I'm not mistaken, or the U.K. in any case.

Q- In Scotland, Doctor. Are you putting this forward as an authoritative article, by the way?

A- I've certainly found it a helpful article, and if that 20 qualifies it as authoritative, yes, it's authoritative.

Q- Interesting definition of authoritative, My Lord. I'll let that pass.

25 Would you turn to page seven eighty-eight (788) for a moment?

A- There's a heading called: "Results." It begins with the initial discussions. It starts by saying:

"All of the primary school groups, except for the 6 year olds in the inner city working class area, were able to describe the selling function of advertising."

5 It tells people the price of things, sometimes they can see, you can see and it tells you to buy it.

Then further down, near the bottom of that column:

10 "All of the groups, except for the 6 year olds agree that the advertisements which they most liked were the funny ones. A few of the most frequently mentioned were T.V. advertisements for products such as crisps and chocolates,

15 followed among the secondary school children by T.V. advertisements for beers and lagers.

Commercial with catchy tunes or jingles were also frequently mentioned. None of the

primary school children spontaneously claimed that advertisers sometimes used biased appeals

20 or that advertisements could sometimes be

misleading. By contrast, the secondary school children made much of this feature of advertising. Tell a lot of lies. Say

25 something that's brilliant and it always works

and it does not ..."

-- I translate the Scots dialect into English --

"... and it does not."

Do you see that?

5 A- Yes, I see it.

Q- "Perhaps not surprisingly, since most of the
advertisement mentioned had been seen on
television, only 3 primary and 3 secondary
school groups mentioned cigarette advertising
10 during the preliminary discussions. However,
on the few occasions when cigarette
advertisements were referred to, the
children's comments were critical. Primary
school children mentioned health issues.

15 Cigarettes give you cancer and there are
posters about them, they should be banned.
Secondary children mentioned health issues and
persuasive techniques. They lead people on,
make it seem as if you're healthy and clean,
20 whereas they don't do you any good and they're
dirty."

Do you see all that?

A- Yes, I do see that.

Q- And isn't it also true that when it came to the brand
25 stretching ads, which are not directly cigarette ads,

but the John Player's Special Grand Prix Holiday advertisements, that the respondents had no trouble at all, not only seeing that these were cigarette ads, but that they didn't like them.

5 That's also on page seven eighty-eight (788), isn't it?

"Examination of the qualitative data revealed that none of the primary school children said the advertisement is misleading. However,
10 most of the secondary school groups made this point, including 3 of the 4 groups of 12 year olds. What's John Player's Holidays got to do with cigarettes? Garbage! It's a con! It's a con way of advertising cigarettes!"

15 Do you see all that?

A- Yes, I see it, yes.

Q- So something else we could draw from this article, if we wanted to read it all, is that there was a decidedly negative reaction and we see that set out at page seven eighty-eight (788); don't we?
20

A- Yes. I take it and I think I've never said anything to the contrary, that children actually much younger than adolescents know when they're dealing with ads and I've also made the point several times that children in the eight (8) to twelve (12) year old group are capable of

source derogation.

Q- M'hm.

A- But I think that much of the testimony of this morning went to the point that defending oneself against ads requires more than simply knowing that they're ads and derogating the source which, while perhaps it's better than nothing, it doesn't amount to being able to make counter arguments against the advertising and let alone against the product.

5 10 Q- I want to show you the nineteen seventy-nine (1979) Surgeon General's report.

Me BAKER:

What page?

Me IRVING:

15 Page seventeen fifteen (17-15). Chapter seventeen (17), page fifteen (15).

THE COURT:

Quelle page, I'm sorry?

Me BAKER:

20 Seventeen fifteen (17-15), My Lord.

Me IRVING:

Seventeen dash fifteen (17-15), My Lord.

Q- There's a heading there: "Mass Media." It says this:
25 "In a task force report on respiratory diseases, the National Institutes of Health

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10

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state that mass media have been used extensively in anti-smoking efforts, but exactly how they influence behaviour is unclear, Ward reports. But in a study designed to ascertain attitudes towards television commercials and to analyze the effects of television advertising on adolescents, the television medium appears to influence the formation of ideas and attitudes, yet does not trigger adolescents to buy a product. Ward's study indicates that cigarette ads are perceived by teenagers as hypocritical and they're listed as least liked while anti-smoking ads are perceived as straightforward and are liked."

Do you know Ward and are you familiar with that study?

A- I've read -- I can't tell by reading the number eighty-seven ('87) here what particular study by Ward is being referred to. I'm aware of some of the work that Ward has done or that at least he's contributed to this literature.

Q- M'hm. It will be in the index.

THE COURT:

Nineteen seventy-one (1971), Television Advertising and the Adolescent, Clinical ..."

A- Yes. I've seen reference to this article, but I don't think that I've read it directly.

Me IRVING:

Q- I see. Are you aware, Professor, that in Quebec there
5 is a ban on all advertising directed at children thirteen (13) years and younger?

A- A ban on...

Q- All forms of advertising directed at children thirteen (13) years and younger?

10 A- I'm vaguely aware that that's true, yes. I don't know the details of the law, but yes, I've heard that this is so.

Q- And do you know whether Quebec is unique in Canada in having such a law considering the field you're in?

15 A- I do not know whether Quebec is unique in that way, no.

Q- I see. Are you -- do you know that the validity of that law was tested in the Courts and resulted last year in a judgment of the Supreme Court of Canada.

Me BAKER:

20 My Lord, perhaps if Mr. Irving would put a question to the witness in his capacity as an expert on developmental psychology, it might be appropriate, but goodness...

THE COURT:

25 Yes, but the witness professes to give an opinion on the

5

effect of advertising as a influential factor on children and teenagers, so any question directed to his general knowledge of the existing -- as to the existence of bans involving advertising may be relevant at least to his credibility.

Me BAKER:

I agree, My Lord, I simply thought he was going to get into an analysis of Irwin Toy.

THE COURT:

10 I didn't think you were anyways.

Me IRVING:

No, My Lord. No, I ...

THE COURT:

But if you are, I'll stop you.

15 Me BAKER:

Thank you, My Lord. Confirmed by the Court of Appeal.
You being the Court of Appeal in a sense.

Me IRVING:

Q- Well, Doctor, the majority judgment of the Supreme Court made a -- and this is not an analysis of it. I want to put a point of fact in this witness' area of expertise to him. And if you'd like to have it in front of you, I'd be happy to give you a copy. But let me just read it to you and see, because it's a simple enough point.

25

Me BAKER:

If you have the document in front of you, please put it in front of the witness.

A- Here's a copy.

5 Me IRVING:

Q- Look at page nine eight eight (988) and nine eight nine (989).

THE COURT:

That's the Irwin Toy...

10 Me IRVING:

Irwin Toy.

Me BAKER:

Nine eighty (980) and nine eight nine (989)?

Me IRVING:

15 No, no, no, nine eight eight (988) and nine eight nine (989). It's really nine eight nine (989).

Q- Now, there is a finding at page nine eight nine (989) in the left-hand column. I'm reading the English version.

First full sentence:

20 "The studies suggest that at some point between age 7 and adolescence, children become as capable as adults of understanding and responding to advertisements."

Do you see that?

25 A- Yes, I do see it.

Q- Do you accept that as being correct?

A- Yes. Adolescence is not very clearly specified here, so sometime between seven (7) and adolescence which, in my own testimony, is roughly bracketed at period twelve (12) to eighteen (18). I don't know the specific definition of adolescence that's had in mind here, but if you said sometime between seven (7) and eighteen (18) or even take the middle of the adolescent period, sometime between seven (7) and sixteen (16), for example, then as I testified yesterday, I would agree with that, with the provision that you understand that this is not true often for disadvantaged children, children with under educations, et cetera.

22/0058 Q- Doctor, what they are saying is that sometimes between age seven (7) and adolescence. Now, when does adolescence start in your definition? Twelve (12) or thirteen (13)?

A- I've tried to make it clear that it's vague, but somewhere around twelve (12) or thirteen (13), yes.

20 Q- All right. So again, let me put the question to you. Do you agree with what is said here as they say it:

"The studies suggest that at some point between age 7 and adolescence, i.e. 12 or 13, children become as capable as adults of understanding and responding to

advertisements."

Me BAKER:

Before the witness answers the question, My Lord, my friend has taken a sentence out of an eighty (80) page Supreme Court decision. He's asking the witness to comment on the words of the Supreme Court of Canada as a finding of fact. Unless the witness is entitled to read that document and put the entire discussion on young people in proper context, I put it to you that it's entirely improper for him to comment on the sentence as it's drafted in the judgement of the Supreme Court.

THE COURT:

Maybe we could put the question in a different way, whether or not he's aware of such studies indicating that children between seven (7) and thirteen (13) are as much cognitive as adolescents.

Me IRVING:

Let me adopt that suggestion.

Q- Sir, is it not a fact that there are studies which indicate that at some time between about the age of seven (7) and about the age of twelve (12) or thirteen (13), children become just as capable as adults of understanding and responding to advertisements?

A- Well, there is controversy as to when cognitive development comes to an end or reaches a plateau that is

equivalent to that of adults. I could certainly point you to certain studies in the literature that believe -- in which the authors believe that by the time the child is twelve (12) or thirteen (13) they have achieved 5 intellectual maturity. I could also point in my report to a series of authors who take the contrary view and believe that there are important cognitive changes and developments during the adolescent period, that leaves...

10 THE COURT:

Q- So your answer is yes, with qualification to the effect that, yes, there are some studies that say that and yes, there are some studies that say the contrary. Is that your answer?

15 A- Yes, I'm happy with that.

Me IRVING:

I have no further questions.

THE COURT:

Any re-examination?

20 Me BAKER:

No, My Lord.

THE COURT:

Okay, thank you.

25 AND FURTHER DEPONENT SAITH NOT

THE COURT:

What's up?

Me BAKER:

Well, for the next few days we have a holiday. We've

5 got Dr. Cohen coming in next Tuesday.

Me IRVING:

I don't like to sound like a broken record, My Lord, but
I have not yet heard about that data from Dr. Harris.
With May off and people going here and there and the
10 necessity of having it sent away to be looked at, I
would again urge that there be some sort of strong
suggestion at least from the Court that the data should
be provided forthwith, otherwise we're going to run into
trouble at the beginning of June.

15 Me BAKER:

I can assure the Court, consistent with the undertaking
I made yesterday, that I telephoned Dr. Harris
yesterday. I don't exactly sit by my telephone these
days, as you can well imagine, waiting for him to
answer, we've missed each other twice now. I will
continue to communicate with the good doctor, who is in
20 Boston. I've had a very busy schedule, as my friend
knows, so it's not so much that he sounds like a broken
record, I don't think there's a requirement for judicial
intervention on this issue now.

THE COURT:

I don't think I should intervene right now. Anyways, you'll have a day tomorrow, so you might be able to reach Dr. Harris and speak to him.

5 Me BAKER:

I might decide to sleep tomorrow. I feel very tired.

THE COURT:

Or you might sleep and try to get him in the afternoon.

Me BAKER:

10 That's right, My Lord.

THE COURT:

But you might try to get him anyways, I'm sure. Don't I have his c.v.? No? Okay, this I keep. Okay, have a nice holiday, gentlemen and ladies.

15

ADJOURNMENT